10-28-88
Vol. 53 No. 209
Pages 43673-43842

federal register

Friday
October 28, 1988

Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301 43673
910 43673
1464 43674
1924 43675
Proposed Rules:
422 43719

12 CFR
11 43677
207 43678
220 43678
221 43678
224 43678

15 CFR
922 43802
Proposed Rules:
921 43816

17 CFR
240 43800

20 CFR
404 43681
614 43799
Proposed Rules:
Ch. V 43731
655 43722

21 CFR
74 (2 documents) 43681, 43682
81 (3 documents) 43681, 43682, 43685
82 (2 documents) 43681, 43682
1308 43684

26 CFR
1 43688
602 43688
Proposed Rules:
1 43736

29 CFR
1952 43688

31 CFR
Proposed Rules:
103 43736

32 CFR
505 43689

36 CFR
228 43690

40 CFR
52 43691
60 43799

44 CFR
64 (2 documents) 43693, 43694

46 CFR
571 43696

47 CFR
Proposed Rules:
73 43736
76 43736

48 CFR
227 43698
252 43698
Proposed Rules:
232 43738
242 43738
245 43738
252 43738

50 CFR
655 43718
Proposed Rules:
655 43741

Rules and Regulations

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-140]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding to the list areas in five counties in North Carolina and one county in South Carolina. We are also deleting from the list areas in eight counties in North Carolina and three counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, National Programs, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective July 1, 1988 (53 FR 24923-24928, Docket Number 88-027), we amended the regulations at 7 CFR Part 301 by adding areas in Beaufort, Duplin, Greene, Hoke, and Sampson Counties in North Carolina, and Florence County in South Carolina to the list of suppressive areas in § 301.80-2a. We also deleted areas in Craven, Cumberland, Duplin, Hoke, Lenoir, Richmond, Scotland, and Wayne Counties in North Carolina, and Florence, Horry, and Marlboro Counties in South Carolina from the list of suppressive areas in § 301.80-2a. Comments on the interim rule were required to be postmarked or received on or before August 30, 1988. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have detemined that it is not a "major rule." Based on information complied by the Department, we have determined that this rule will have an estimated annual effect on the economy of less than $4,000; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 172 of these entities by removing 164 entities from regulation and placing 8 new entities under regulation. We have determined that the 164 deregulated entities will realize combined annual savings of approximately $3,800, or $23.17 each, in regulatory and control costs. We estimate that the 8 newly regulated entities will need to invest a similar amount, approximately $23 each, per year, in order to comply with our regulations. We therefore estimate that the overall impact from this action will be less than $4,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 24923-24928 on July 1, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, on this 24th day of October.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-24933 Filed 10-27-88; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 637]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 637 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 286,733 cartons during the period October 30 through November 5, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 637 (§ 910.937) is effective for the period October 30 through November 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that smalll businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on October 25, 1988, in Redlands, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12–1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.937 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.937 Lemon Regulation 637.

The quantity of lemons grown in California and Arizona which may be handled during the period October 30, 1988, through November 5, 1988, is established at 286,733 cartons.

Dated: October 26, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88–25091 Filed 10–27–88; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1464

Tobacco; Loans and Purchase Program

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR Part 1464 to conform with the provisions of section 1001C of the Food Security Act of 1985, as implemented in the regulations found at 7 CFR Part 1498 (53 FR 29552). Also, in accordance with the provisions of section 637 of Pub. L. 99–591, this final rule deletes special provisions which previously required burley tobacco producers, as a condition of eligibility for price support, to agree to make contributions on a three-year basis to any No Net Cost Fund established by a burley tobacco loan assocaition, thus making burley tobacoo producers subject to the same one-year provision as are required by producers of other kinds of tobacco. Additionally, a minor technical amendment is made in 7 CFR 1464.10 for clarity.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas Richardson, Tobacco Operations Branch, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–3518.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedure established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Exceutive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR

Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A final rule was published on August 5, 1988 (53 FR 29552), setting forth regulations at 7 CFR Part 1498 which will be used in determining whether a foreign individual or entity is eligible to receive certain payments, loans, and benefits. Such regulations affect the eligibility of certain producers of tobacco. Accordingly, for clarity the regulations at 7 CFR Part 1498 are being referenced in 7 CFR 1464.7 for use in determining price support program eligibility for tobacco producers.

Section 637 of Pub. L. 99–591 deleted special provisions set forth in the Agricultural Act of 1949, as amended, which required that burley tobacco producers, as a condition for price support eligibility, agree to make contributions on a three-year basis to any No Net Cost Fund established for an association that provides price support to burely tobacco producers. Deleting this special provision permits burley tobacco producers to qualify for price support in the same manner as other tobacco producers by agreeing, on an annual basis, to make contributions to any No Net Cost Fund established for a burley tobacco association under the provisions of 7 CFR 1464.10. This final rule amends 7 CFR 1464.10 to remove this special three-year provision for burley tobacco.

This final rule inserts, in 7 CFR 1464.10 (i)(5)(i), a word which was omitted inadvertently in a previous amendment.

Since these amendments are merely technical in nature, it has been determined that public comments are not necessary. Accordingly, this final rule is effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1464

Price support programs, Tobacco.

Final Rule

PART 1464—[AMENDED]

Accordingly, 7 CFR Part 1464 is amended to read as follows:

1. The authority citation for Part 1464 is revised to read:

Authority: Secs. 4 and 5 of the Commodity Credit Charter Act, as amended, 62 Stat. 1070 as amended, 1072 15 U.S.C. 714b, 714c, secs. 101, 106, 106A, 106B, 401, 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 96 Stat. 197, as amended, 63 Stat. 1054, as amended, 7 U.S.C. 1441, 1445, 1445–1, 1421, 1423, sec. 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308.

2. Section 1464.7 is amended by adding paragraph (d) to read as follows:

§ 1464.7 Eligible producers.

* * * * *

(d) Must not be ineligible, in accordance with Part 1498 of this title, to receive price support payments, loans, and benefits.

§ 1464.10 [Amended]

3. Section 1464.10 is amended by removing and reserving paragraph (g) and by adding the word "association" after the word "applicable" in paragraph (i)(5)(i).

Signed in Washington, DC, on October 25, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–25009 Filed 10–27–88; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations dealing with planning and performing construction and other development. This action is implemented to allow applicants to obtain the services from a wider range of individuals and organizations in order to plan projects and administer general construction contracts, and will increase the loan applicant's ability to obtain the above services at reasonable cost and in a timely manner. The intended effect is to increase FmHA's ability to provide decent, sanitary and safe housing in rural areas.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Specialist, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5534, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans). For the reasons set forth in the Final rule and related Notice(s) to 7 CFR 3015, Subpart V, this activity affects the following programs that are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.405—Farm Labor Housing Loans and Grants; 10.406—Farm Ownership Loans; 10.413—Recreation Facility Loans; 10.415—Rural Rental Housing Loans; and 10.416—Soil and Water Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it deals with the general administration of construction contracts and minimum certification requirements.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

Background

At the present time, FmHA requires applicants to have their drawings and specifications certified only by licensed architects, professional engineers, authorized building officials, or certified code authorities as meeting applicable laws, ordinances, codes, and regulations related to the safety and sanitation on buildings. This requirement has caused approved loan applicants hardship in finding qualified certifiers at reasonable cost and has resulted in delays in assisting low-income and very low-

income applicants to obtain adequate housing. The major purpose for revising FmHA regulations is to authorize individuals or organizations, trained and experienced in the compliance, interpretation or enforcement of the applicable development standards, to certify that drawings and specifications meet adopted codes and standards.

On March 9, 1988, FmHA published a proposed rule in the **Federal Register** (53 FR 7532–7534) with a comment period ending May 9, 1988. Fourteen comments were received. The following concerns were registered: (1) The changes, as proposed, would have a definite weakening effect upon certification of drawings and specifications as they relate to reliability and competency of builders and contractors. A builder's or contractor's license does not assure competency as to plan reviews since such review is not part of the licensing process. (2) The statement "others with equivalent qualifications" is very vague. What is the definition of "equivalent qualifications"? Who judges or decides whether these "equivalent qualifications" are acceptable? What criteria is followed? (3) As part of the certification process the copy of the license, certificate or authorization of the individual doing the certifying should be included. (4) The changes, as proposed, would increase the amount of paper work and the workload of FmHA personnel in both the State and county offices, and accountability and reliability of FmHA personnel. (5) There would be possible conflict of interest by allowing contractors and builders to certify their own plans and specifications. (6) There was concern that too many errors would result by allowing untrained and/or uncertified officials, be they FmHA employees or other government officials, to review plans submitted by builders/contractors in order to determine if they meet adopted codes. (7) Debarment proceedings are difficult and time consuming, therefore, causing a reluctance on the part of the FmHA County Supervisors to initiate such actions. (8) The first set of plans submitted by a builder should be reviewed by the FmHA personnel designated to do so prior to loan approval and construction. By having a post review, it may be too late to effect proper correction of a deficiency. (9) FmHA Instructions should provide grounds for discontinuing acceptance of certification from persons who submit certifications determined by FmHA not to be in compliance with codes. (10) Increased cost to loan applicants due to certifiers being held liable for deficiencies. (11) Architects and engineers have always certified that plans and specifications meet State and local codes and ordinances—to require additional certification appears somewhat redundant.

After careful review, discussion, and evaluation of the comments received, FmHA has decided to limit self certification and is adopting procedures to allow a wider range of individuals and organizations to certify drawings and specifications, although the range of such certifiers is not as broad as that contained in the proposed rule. Self certification will be limited to builders/contractors that have been approved by the United States Department of Housing and Urban Development (HUD) or provide a 10-year warranty, also the use of plan services will be available to builders/contractors who are unable to self certify. This will resolve the major problem of States not having certifiers at a reasonable cost to loan applicants.

Discussion of Changes

1. Section 1924.5(f)(1)(iii) is partially revised as follows:

(a) Paragraph (A) is revised to list individuals or organizations who are authorized to certify drawings and specifications.

(b) Paragraph (B) is revised to state the certifier's license, or authorization must be current at the time of certification and a building permit or professional stamp is not an acceptable substitute for the certification statement.

(c) Paragraph (C) is revised to list others authorized to certify drawings and specifications.

(d) Paragraph (D) is revised to contain the provisions of what was paragraph (B) in the current regulation, which required that the same individual or organization (if available) that certified the original drawings and specifications certify any modifications to the original drawings and specifications. If that person is not available, the drawings and specifications must be recertified by another authorized plan certifier.

(e) Paragraph (E) is added to contain the provisions of what was paragraph (C) in the current regulation, which stated under what circumstance the certification of a modification of drawings and specifications may be waived.

(f) Paragraph (F) is added to contain and revise the provisions of what was paragraph (D) in the current regulation, and provides the suggested format for certification to contain the minimum representation from the certifier that is acceptable to FmHA.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan program—Agriculture, Low and moderate income housing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1924—GENERAL

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub.L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by revising paragraphs (f)(1)(iii) (A) through (E) and adding (f)(1)(iii)(F) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

(*1*) Licensed architects,

(*2*) Professional engineers,

(*3*) Plan reviewers certified by a national model code organization listed in Exhibit E to this subpart,

(*4*) Local building officials authorized to review and approve building plans and specifications, or

(*5*) National codes organizations listed in Exhibit E to this subpart.

(B) The license or authorization of the individual must be current at the time of the certification statement. A building permit (except as noted in paragraph (f)(1)(iii)(C)(*2*) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For Single Family Housing (one to four family dwelling units) FmHA may also accept drawings and specifications that have been certified by:

(*1*) Registered Professional Building Designers certified by the American Institute of Building Design.

(*2*) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who reviews plans as well as inspects construction for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities and publish, as a State supplement to this section, a list of those communities that qualify.

(*3*) A plan service that provides drawings and specifications that are certified by individuals or organizations as listed in paragraphs (f)(1)(iii)(A) or (f)(1)(iii)(C) (*1*) and (*2*) of this section as meeting the appropriate state adopted development standard.

(*4*) Builders/Contractors who provide 10-year warranty plans for the specific FmHA finance dwelling unit that meet the requirements of Exhibit L of this subpart.

(*5*) Builders/Contractors that are approved by the United States Department of Housing and Urban Development (HUD) for self-certification.

(D) The modifications of certified drawings or specifications must be certified by the same individual or organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications msut be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder or original author of the drawings and specifications provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) The following format is suggested for certification and contains the minimum representation acceptable to FmHA:

I _____ being a (licensed architect, professional engineer, or authorized building official, etc.) in the State of _____, hereby certify that I have reviewed:

_____ the drawings and specifications dated _____ prepared by (name of firm or individual) and related to the development of the (project/applicant name (if known) and location)

_____ modifications listed below, that have been clearly indicated on the drawings and specifications dated _____ prepared by _____, certified by _____ and related to the development of the (project/applicant name (if known) and location).

Based upon this review, to the best of my/our knowledge and belief, these documents conform to the (names and editions of applicable development standards) designated as the development standard for the project.

I further understand that false certification and failure to comply may result in suspension or debarment from participating in future government programs.

Date

Signature

Title

* * * * *

Date: September 14, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-24886 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 88-16]

Securities Exchange Act Disclosure Rules; Technical Amendments

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is publishing technical amendments to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11. The technical amendments involve minor adjustments or additions to the language of certain sections to conform more clearly to long-standing OCC interpretation of the sections. The action is necessary because when the OCC adopted final amendments to Part 11, which became effective on December 30, 1985, it made certain minor changes that were inadvertent. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities and Corporate Practices Division, telephone (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is publishing technical amendments to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to clarify the meaning of certain sections of the rule.

On October 30, 1985, the OCC published in the **Federal Register** final amendments to Part 11 at 50 FR 45276. These amendments, which became effective on December 30, 1985, included a complete reformatting and reorganization of Part 11. In the process of reformatting the regulation, certain amendments, intended to involve form only, but which could be interpreted to be substantive, were adopted. The OCC has continued to interpret these provisions in the same manner as prior to the 1985 amendments. The purpose of this final rule is to prevent any misinterpretation of these substantively unchanged provisions.

Section 11.410(e)(2) is amended by reinserting a clause which was accidentally deleted in the 1985 amendments.

Section 11.590, Item 5 is amended by adding a new paragraph requiring disclosure in proxy statements of certain transactions between a bank and its principal security holders or members of their immediate families.

Prior to the 1985 amendments, the above disclosure requirement, as well as the requirement for similar disclosure of certain transactions between the bank and its directors or nominees, was contained in Item 7(e) of the proxy form, which at the time was codified at § 11.51, Item 7(e). When the disclosure requirement was moved to Item 6 as part of the 1985 amendments, it became subject to an existing introductory instruction in Item 6 limiting the disclosure required by that Item to nominees and persons who would remain as directors after the meeting. The deletion of the disclosure requirement for transactions with principal security holders was unintentional, and the OCC has continued to require such disclosure as being material to shareholders or investors.

Accordingly, § 11.590, Item 5, which contains other disclosure requirements for principal shareholders, is amended to incorporate this requirement. Section 11.590, Item 6 is amended to clarify its scope, in light of the changes to Item 5 discussed above.

Sections 11.844(c)(1)(iv) (D), (E) and (F), are being amended to require disclosure of indebtedness to trusts,

immediate family members and corporations or organizations having specified relations with principal security holders. This disclosure was required prior to the 1985 amendments but was inadvertently deleted from the regulation when the format was changed in 1985. The OCC has continued to require this disclosure as material to shareholders and investors.

Section 11.844(c), Instruction D is amended to clarify that for purposes of determining whether indebtedness of a director, nominee or principal shareholder exceeds 10 percent of equity capital, the indebtedness shall be aggregated with that of a trust, immediate family member or affiliated corporation or organization, related to such person. Aggregation was required prior to the 1985 amendments. Since the time of the 1985 amendments the OCC has continued to require aggregation.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, the OCC has determined that these amendments do not constitute a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other small entities.

Adoption Without Notice and Comment and Reason for Immediate Effective Date

The OCC has found that notice and comment procedures and a thirty day delayed effective date concerning this final rulemaking are unnecessary. This final rule is technical in nature and has no substantive effect.

List of Subjects in 12 CFR Part 11

National Bank, Banking, Securities disclosure rules.

For reasons set out in the preamble, Part 11 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 11—[AMENDED]

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w.

§ 11.410 [Amended]

2. Section 11.410(e)(2) is amended by inserting the clause "shall be deemed to be beneficial owners of the securities" between the words "securities" and "subject".

3. Section 11.590, Item 5, paragraph (h) is added to read as follows:

§ 11.590 Form for proxy and information statement (Form F-5).

Item 5. * * *

(h) Furnish the information required by § 11.844(a) for persons described in § 11.844(a)(3) and any member of the immediate family of persons described in § 11.844(a)(3).

4. Section 11.590, Item 6, paragraph (b) is revised to read as follows:

§ 11.590 Form for proxy and information statement (Form F-5).

Item 6. * * *

(b) The information required by § 11.844(a) for persons described in § 11.841(a) (1) and (2) and any member of the immediate family of persons described in § 11.844(a) (1) and (2).

* * * * *

§ 11.844 [Amended]

5. Section 11.844(c)(1)(iv)(D) is amended by changing the phrase "persons specified in § 11.844(c)(1)(iv)(A) or § 11.844(c)(1)(iv)(B)" to read "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

6. Section 11.844(c)(1)(iv)(E) is amended by changing the phrase "persons specified in paragraph (c)(1)(iv) (A) and (B)" to "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

7. Section 11.844(c)(1)(iv)(F) is amended by changing the phrase "persons specified in paragraph (c)(1)(iv) (A) and (B)" to "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

8. Section 11.844(c), **Instructions to Paragraph (C) of § 11.844,** Instruction 2.D., is amended by changing the phrase "to a person specified in (A), (B), (C), (D), (E) or (F) of this paragraph" to read "by the bank to a person specified in (A), (B) or (C) of this paragraph, together with extensions of credit by the bank to related persons or entities specified in (D), (E) or (F) of this paragraph.".

Date: October 24, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-25011 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective August 8, 1988 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TTD) (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective August 8, 1988. Additions and deletions for that List were published at 53 FR 28188, July 27, 1988. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. Teh full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. §§ 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Alaska Bancorporation
$.01 par common
Amcole Energy Corporation
$.01 par common
American First Corporation
$1.00 par common
American Health Companies, Inc.
$.01 par common
American Telemedia Network, Inc.
No par common
Anchor Financial Corporation
$6.00 par common
Bancoklahoma Corporation
$2.00 par common
Bercor, Inc.
No par common
Bildner, J. Sons, Inc.
$.01 par common
Bioplasty, Inc.
$.01 par common
Butler, John O., Company
$.01 par common
Calstar, Inc.
$.10 par common
Camera Platforms International, Inc.
$.005 par common
CCA Industries, Inc.
Class A, warrants (expire 06–30–89)
Chief Automotive Systems, Inc.
$.10 par common
Coated Sales, Inc.
$.01 par common
Computer Microfilm Corporation
$.25 par common
Corvus Systems
No par common
Crazy Eddie, Inc.
6% convertible subordinated debentures
Decor Corporation
$.01 par common
Dewey Electronics Corporation
$.01 par common
DNA Plant Technology Corp.
Warrants (expire 01–17–90)
Eagle Telephonics, Inc.
Class A, warrants (expire 10–12–88)
Empire Insurance Company
$1.00 par common
Endotronics, Inc.
No par common
Finest Hour, Inc.
No par common
First World Cheese, Inc.
Warrants (expire 06–05–91)
Fountain Powerboat Industries Inc.
Warrants (expire 12–15–91)
Gateway Medical Systems, Inc.
$.10 par common
Gemcraft, Inc.
$.10 par common
General Physics Corporation
$.025 par common
Geneve Capital Group, Inc.
$.10 par common
Healthways Systems, Inc.
$.01 par common
Hitk Corporation
$.001 par common
Infinity Broadcasting Corp.
Class A, $.01 par common
Intel Corporation
Warrants (expire 08–15–88)
International Robomation/Intelligence
No par common
Invention, Design, Engineering Associates, Inc.
$.01 par common
Knutson Mortgage Corporation
$.01 par common
Medmaster Systems, Inc.
Warrants (expire 07–10–91)
Memory Metals, Inc.
$.01 par common
Microwave Filter Company, Inc.
$.10 par common
North American Holding Corp.
$.01 par common, Class A, non-voting, $.001 par common
Pay ' Save, Inc.
$1.00 par common
Precision Target Marketing, Inc.
$.01 par common
Warrants (expire 08–23–89)
Quality Systems, Inc.
$.01 par common
Ramtek Corporation
$.01 par common
Ritzy's G. D., Inc.
No par common
Saratoga Standardbreds, Inc.
$.01 par common
Scientific Micro Systems, Inc.
$.01 par common
Sooner Defense of Florida, Inc.
$.01 par common
Southern Hospitality Corporation
$.08-⅓ par common
Thermal Profiles, Inc.
$.01 par common
Trans World Airlines, Inc.
$6.00 par cumulative exchangeable preferred
United Financial Group, Inc.
No par common
Vanzetti Systems Inc.
$.01 par common
Vega Biotechnologies, Inc.
$.01 par common
Virgin Group, PLC
American Depository Receipts
Webb, Del E., Corporation
Warrants (expire 02–01–90)
Wessex Corp.
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Albany International Corp.
Class A, $.001 par common
Amcast Industrial Corporation
No par common
Baker, Fentress & Company
$1.00 par common
Bear Automotive Service Equipment Co.
$.01 par common
Berkline Corporation, The

$1.00 par common
Beverly Savings Bank (Massachusetts)
$.10 par common
BIW Cable Systems, Inc.
$.40 par common
Brougher Insurance Group, Inc.
No par common
Capital Wire & Cable Corporation
No par common
Central Pacific Corporation
No par common
Century Communications Corp.
Class A, $.01 par common
Century Papers, Inc.
$1.00 par common
Command Airways, Inc.
$.01 par common
Comprehensive Care Corporation
$.10 par common
Concurrent Computer Corporation
$.01 par common
Crosby, Philip Associates, Inc.
$.01 par common
Crystal Oil Company
$.01 par common
$.01 par convertible preferred
Cyprus Minerals Company
No par common
Datametrics Corporation
No par common
Daxor Corporation
$.01 par common
Diagnostic Products Corporation
No par common
Diasonics, Inc.
No par common
Dresher, Inc.
$.01 par common
Energas Company
No par common
EPSCO, Inc.
$1.00 par common
Farm Fresh, Inc.
$.01 par common
First Kentucky National Corporation
No par common
First Union Corporation
$3.33-⅓ par common
Freedom Federal Savings Bank (Illinois)
$.01 par common
Frozen Food Express Industries, Inc.
$1.50 par common
Gartner Group, Inc., The
$.01 par common
Grandview Resources, Inc.
No par common
Hooper Holmes, Inc.
$.01 par common
Hunter-Melnor, Inc.
$.01 par common
IEC Electronics Corporation
$.05 par common
Josephson International, Inc.
$.05 par common
Lancer Corporation
$.01 par common
Lewis, Palmer G., Company, Inc.
$1.00 par common
Matrix Science Corporation
$.01 par common
Micom Systems, Inc.
$.01 par common
Middleby Corporation, The
$.01 par common
National Guardian Corporation
$.10 par common
Norton Enterprises, Inc.
$.01 par common
P&C Foods, Inc.
$.01 par common
Photronics Corporation
$.10 par common
Shoney's South, Inc.
$.05 par common
Silicon Systems, Inc.
$.01 par common
Simmons Airlines, Inc.
No par common
Southold Savings Bank, The (New York)
$1.00 par common
Southstate Bank for Savings
$.10 par common
Sovran Financial Corporation
$5.00 par common
Spectramed, Inc.
$.01 par common
SPI Pharmaceuticals, Inc.
$.01 par common
System Industries, Inc.
$.01 par common
Taunton Savings Bank
$.10 par common
TCBY Enterprises, Inc.
$.10 par common
Total Erickson Resources, Ltd.
$.01 par common
Unicare Financial Corp.
No par common
USP Real Estate Investment Trust
$1.00 par shares of beneficial interest
Welbilt Corporation
$.10 par common
Wellman, Inc.
$.001 par common
Western Federal Savings and Loan Association (California)
$1.00 par common
Wings West Airlines, Inc.
No par common
Wyse Technology
No par common
Xidex Corporation
$.0875 par common
Warrants (expire 04-16-93)
Zondervan Corporation, The
$1.00 par common

Additions To The List

ADT Limited
American Depository Receipts
All American Semiconductor, Inc.
$.01 par common
American Continental Corporation
$1.00 per exchangeable preferred
American Power Conversion Corporation
$.01 par common
ARIX Corporation
No par common
Asiamerica Equities, Inc.
$1.00 par common
Assix International, Inc.
$.001 par common, Warrants (expire 07-19-91)
Associated Natural Gas Corporation
$.10 par common
B & H Bulk Carriers, Ltd.
$.01 par common
Babbage's, Inc.
$.10 par common
Bailey Corporation
$.10 par common
BI Incorporated
No par common
Biogen, Inc.
Warrants (expire 06-30-94)
BMC Software, Inc.
$.01 par common
Candela Laser Corporation
$.01 par common
Casual Male Corporation, The
$.01 par common
Cellular, Inc.
$.001 par common
Centennial Beneficial Corp.
No par common
Ceramics Process Systems Corporation
$.01 par common
Charter Federal Savings Bank (New Jersey)
$.01 par common
Chemex Pharmaceuticals, Inc.
Class 1—warrants (expire 05-20-90)
Chemical Financial Corp.
$10.00 par common
Cliffs Drilling Company
No par convertible exchangeable preferred stock
Colorocs Corporation
Class C, warrants (expire 03-31-89)
Class D, warrants (expire 10-25-88)
Concord Camera Corp.
No par common
Constar International, Inc.
Warrants (expire 11-13-89)
Convergent Solutions, Inc.
$.01 par common, Warrants (expire 05-15-92)
Coral Gold Corporation
No par common
Cornucopia Resources Ltd.
No par common
Corporate Data Sciences, Inc.
No par common
Critical Industries, Inc.
$.001 par common
Dekalb Genetics Corporation
Class B, no par common
DFSoutheastern, Inc.
$1.00 par common
Eagle Bancorp, Inc.
$.10 par common
Eastland Financial Corp.
$.01 par common
Environmental Control Group, Inc.
$.10 par common

Essex County Gas Company
$2.50 par common
First Federal Savings Bank of Perry
$1.00 par common
First of Long Island Corporation, The
$.10 par common
Franklin First Financial Corporation
$.01 par common
Genlyte Group Incorporated
$.01 par common
GNI Group, Ind., The
No par common
Goodheart-Willcox Company, Inc.
$1.00 par common
Gull Laboratories, Inc.
$.01 par common
Healthwatch, Inc.
No par common
High Plains Corporation
$.10 par common
Home Federal Savings Bank (South Carolina)
$1.00 par common
Home Port Bancorp, Inc.
$.10 par common
Imagine Films Entertainment, Inc.
$.01 par common
Intercargo Corporation
$1.00 par common
Intervoice, Inc.
No par common
Kinder-Care Learning Centers, Inc.
$.01 par common
Kwik Products International Corporation
No par common
Landmark American Corporation
$.01 par common
Landmark Graphics Corporation
$.05 par common
Long Island City Financial Corporation, The
$.10 par common
Mayflower Financial Corporaton
$.01 par common
Microamerica, Inc.
$.01 par common
Nalcap Holdings, Inc.
No par common
National Media Corporation
$.10 par common
Neorx Corporation
$.02 par common
Novellus Systems, Inc.
No par common
Olympic Savings Bank (Washington)
$1.00 par common
Pancretec, Inc.
No par common
Phoenix Technology Ltd.
$.001 par common
Pride Petroleum Services, Inc.
No par common
Ratners Group, PLC
American Depository Receipts
Reliable Life Insurance Company, The
Class A, $1.00 par common
Rock Financial Corporation
$3.33 par common
Scientific Technologies, Incorporated
No par common
Selfix, Inc.
$.01 par common
Showscan Film Corporation
$.001 par common
Sierra On-Line, Inc.
$.01 par common
Silk Greenhouse, Inc.
$.01 par common
Smithfield Companies, Inc., The
No par common
Software Toolworks, Inc., The
$.01 par common
Stake Technology Ltd.
No par common
Stotler Group Inc.
$1.00 par common
Structofab, Inc.
$.02 par common
Synoptics Communications, Inc.
No par common
Tele-Optics, Inc.
$.01 par common, Warrants (expire 08–11–89)
Tons of Toys, Inc.
$.01 par common
Tuscarora Plastics, Inc.
No par common
Unigene Laboratories, Inc.
$.01 par common, Warrants (expire 08–11–92)
United National Bancorp
$2.50 par common
Unitronix Corporation
No par common
VMS Mortgage Investors, L.P. III
Depository units of limited partnership interest
Washington Savings Bank, F.S.B. (Maryland)
$.01 par common
Weitek Corporation
No par common
Wetterau Properties, Inc.
$.01 par common
Wholesale Club, Inc., The
No par convertible preferred

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)). October 24, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–24916 Filed 10–27–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age Survivors and Disability Insurance (1950-)

CFR Correction

At 51 FR 10616, March 28, 1986, the Social Security Administration published an amendment to § 404.315(c) of Title 20 (Parts 400–499). The amendment to § 404.315(c) was published incorrectly. At 51 FR 16166, May 1, 1986, the cross reference in § 404.315 was corrected to read "§ 404.1505".

In the April 1987, revision of the Code of Federal Regulations, on page 76, column 2, paragraph (c), line 2, the cross reference was published incorrectly as "§ 404.1405". In the April 1988, revision of the Code of Federal Regulations on page 80, column 1, paragraph (c), line 2, the cross reference continued to be published incorrectly.

§ 404.315 [Corrected]

The cross reference reading "§ 404.1405" should read "§ 404.1505" in the second line of paragraph (c) of § 404.315.

BILLING CODE 1505-01-D

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 87N–0160]

Listing of Color Additives Subject to Certification; D&C Red No. 33; Confirmation of Effective Date and Partial Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date and partial stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 30, 1988, for the permanent listing of D&C Red No. 33 for use in drugs and cosmetics generally. Also, FDA is staying the removal of the section on the temporary tolerances insofar as is necessary to continue the temporary tolerance for D&C Red No. 36.

DATE: *Effective date confirmed:* September 30, 1988, except the provisions that are stayed that relate to a temporary tolerance for D&C Red No. 36.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 1988 (53 FR 33110), FDA published a final rule permanently listing D&C Red No. 33 for general use in drugs and cosmetics, except for use in the area of the eye. The action was in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association; the Pharmaceutical Manufacturers Association; and the Certified Color Manufacturers Association, Inc., and to a petition filed by Procter and Gamble Co. That final rule amended 21 CFR Part 74 by adding new §§ 74.1333 and 74.2333. The rule also amended 21 CFR 81.1 and 81.27 by removing the entries for D&C Red No. 33 from those regulations. The rule revised 21 CFR 82.1333 to require that D&C Red No. 33 conform in identity and specifications to the requirements of 21 CFR 74.1333 and to require that all lakes of the color additive be manufactured from previously certified batches of the straight color additive.

The August 30, 1988, final rule also removed 21 CFR 81.25, which established temporary tolerances for D&C Red No. 33 and D&C Red No. 36, but FDA is staying the removal of that section as it applies to D&C Red No. 36 to allow continuity of use for D&C Red No. 36 while the agency considers an objection to the final rule on that color additive. (See the document published elsewhere in this issue of the **Federal Register** concerning D&C Red No. 36.) The temporary tolerance for D&C Red No. 33 is removed, effective September 30, 1988.

FDA stated that the final rule on D&C Red No. 33 would become effective September 30, 1988, except for any provisions that may be stayed by the filing of proper objections by September 29, 1988. FDA received one objection to the final rule. A manufacturer of the color additive objected to the description of the manufacturing process stated in 21 CFR 74.1333(a)(1), which says "To manufacture the additive, the product obtained from the nitrous acid diazotization of aniline is coupled with 4-hydroxy-5-amino-2,7-naphthalenedisulfonic acid in an alkaline aqueous medium. The color additive is isolated as the sodium salt." The manufacturing process outlined in the objection uses an acetyl derivative of the reactant described in the regulation, coupling the product obtained from the nitrous acid diazotization of aniline with 4-hydroxy-5-acetylamino-2,7-naphthalenedisulfonic acid. The product of this coupling is then deacetylated and isolated as the sodium salt. The objector requested a period of 90 days to allow it to bring its manufacturing process into conformity with the regulation. The objection is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N–0160.

The objection did not request a change in the regulation, and therefore does not provide a basis for not confirming the effective date of the final rule. However, to allow the objector to bring its process into conformity with the final rule, the agency will not take action against D&C Red No. 33 manufactured in accordance with the process described in that objection until after December 31, 1988. The color additive must meet the specifications in the final rule.

FDA is also partially staying the removal of § 81.25 so that the temporary tolerance on use of D&C Red No. 36 in ingested drugs can continue in effect while the objection on that use of that color additive is considered. The listing of D&C Red No. 33 in that section is removed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date of September 30, 1988, for the amendments to Parts 74, 81, and 82 promulgated in the August 30, 1988, final rule (53 FR 33110) is confirmed, except that the removal of § 81.25 is partially stayed as set forth below.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.25 [Amended]

2. The removal of paragraph (c)(1) in § 81.25 *Temporary tolerances*, except for the listing of D&C Red No. 33, is stayed.

Dated: October 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25050 Filed 10–27–88; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N–0366 and 87N–0182]

Listing of Color Additives Subject to Certification; D&C Red No. 36; Confirmation of Effective Date, Partial Stay of Effectiveness, and Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; partial confirmation of effective date and partial stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 2, 1988, for the permanent listing of D&C Red No. 36 for use in drugs and cosmetics generally. The agency is staying one provision to which an objection was made. The agency is also postponing the closing date of the provisional listing for D&C Red No. 36 and staying the termination of the temporary tolerance regulation for D&C Red No. 36.

DATE: *Effective date confirmed:* September 2, 1988, except those provisions that are stayed. The new closing date for the provisional listing is December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of August 2, 1988 (53 FR 29024), FDA published a final rule permanently listing D&C Red

No. 36 for general use in drugs and cosmetics, except for use in the area of the eye. The action was in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA). That rule amended 21 CFR Part 74 by adding new §§ 74.1336 and 74.2336. Also, that rule amended 21 CFR 81.1, 81.25, and 81.27 by removing the entries for D&C Red No. 36 from those regulations. The rule revised 21 CFR 82.1336 to require that D&C Red No. 36 conform in identity and specifications to the requirements of 21 CFR 74.1336 and to require that all lakes of the color additive be manufactured from previously certified batches of the straight color additive. FDA stated that the final rule would become effective September 2, 1988, except for any provisions that may be stayed by the filing of proper objections by September 1, 1988. FDA received one objection to the final rule.

In the August 2, 1988, final rule, FDA stated that the petitioner had not provided information on levels of use of the color additive in drugs. The agency, in searching its files of new drug applications for data on current use levels, found only three ingested drug products containing the color additive, all at very low levels of use. Because this information indicated to the agency that only low levels were necessary to accomplish the intended technical effect, the agency limited the use in ingested drugs to 1.0 milligram (mg) of the color additive per daily dose of the drug. This limit was lower than the 1.7 mgs per daily dose requested by the petitioner.

One drug manufacturer objected to the lower limitation because it manufactures an approved ingested drug product that may be prescribed in some cases at a dosage that provides 1.6 mgs of the color additive in a day. This level is higher than the limit established in the final rule. The objector requested the agency to establish a tolerance of 1.7 mgs of the color additive per daily dose of the ingested drug, as petitioned, in the final rule.

As provided under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the filing of an objection to a particular provision of the final rule serves to stay the effectiveness of that provision of the regulation until the agency can rule on the objection. The objection is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N–0182.

This objection concerns only one provision in the regulations on D&C Red No. 36 rather than the entire effect of the regulations. Thus the agency is staying the effectiveness of the provision of the final rule concerning use in ingested drugs while the agency considers the objector's request. To provide for the uninterrupted use of the color additive and to prevent any interruption in the provisional listing of D&C Red No. 36 for this use, the agency is staying the parts of the August 2, 1988, final rule that removed the entries for D&C Red No. 36 from the provisional list (21 CFR 81.1(b)) and from the temporary tolerances (21 CFR 81.25(c)(1)). During the stay, the use in ingested drugs will be limited by the temporary tolerance. The agency expects that it will need only a brief time to complete its evaluation of the objection. Therefore, the agency concludes that the effective date of the final rule published in the **Federal Register** of August 2, 1988, should be confirmed, with the exception of the provision pertaining to use in ingested drugs, that is, the first sentence in 21 CFR 74.1336(c).

Futhermore, FDA is postponing the October 28, 1988, closing date for the provisional listing of D&C Red No. 36 until December 27, 1988, to provide time for the agency to complete its evaluation of the objection and to issue appropriate **Federal Register** documents. The present closing date of October 28, 1988, was established by a regulation published in the **Federal Register** of August 30, 1988 (53 FR 33122).

Because the current closing date expires on October 28, 1988, FDA concludes that notice and public procedure on this regulation and delayed effective date are impracticable. Thus, good cause exists for issuing the postponement as a final rule, effective on October 28, 1988. Moreover, this action is consistent with the protection of the public health because the postponement simply continues the limitation as it has been for many years, and is consistent with the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982). In accordance with 5 U.S.C. 553(b), (d)(1), and (d)(3), this postponement is issued as a final regulation, effective October 28, 1988.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetics Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date of September 2, 1988, for 21 CFR 74.1336 (except the first sentence in paragraph (c), for 21 CFR 74.2336, and for 21 CFR 82.1336 is confirmed, and Parts 74 and 81 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1336 [Amended]

2. The addition of the first sentence in paragraph (c) in § 74.1336 *D&C Red No. 36* is stayed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

3. The authority citation for 21 CFR Part 81 continues to read as follows

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

4. The removal of the entry "D&C Red No. 36" from the table in paragraph (b) of § 81.1 *Provisional listings of color additives* is stayed, and the closing date is revised to read "December 27, 1988."

§ 81.25 [Amended]

5. The removal of the entry "D&C Red No. 36" from the table in paragraph (c)(1) in § 81.25 *Temporary tolerances* is stayed.

Dated: October 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25049 Filed 10–27–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Carfentanil Into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place carfentanil, a narcotic substance, into Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action follows receipt of a letter from the Associate Commissioner for Health Affairs, Food and Drug Administration (FDA), notifying DEA that carfentanil has received final approval for marketing as a new animal drug. This rule imposes the regulatory controls and criminal sanctions of a Schedule II narcotic substance under the CSA on the manufacture, distribution, importation and exportation of carefentanil.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** on January 12, 1988 (53 FR 743) proposing that carfentanil be placed into Schedule II of the CSA. Interested persons were given until February 11, 1988 to submit comments or objections regarding the proposal. No correspondence of any kind was received regarding the proposal. Furthermore, according to the September 30, 1988 letter from the Associate Commissioner for Health Affairs, FDA, the new animal drug application for carfentanil has been approved.

Based on the scientific and medical evaluation and recommendation contained in the November 12, 1987 letter from the Assistant Secretary for Health, Department of Health and Human Services, the Administrator of DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) Carfentanil has a high potential for abuses;

(2) Carfentanil has a currently accepted veterinary medical use in treatment in the United States; and

(3) Abuse of carfentanil may lead to severe pyschological or physical dependence.

The above findings are consistent with the placement of carfentanil into Schedule II of the CSA. The Administrator further finds that carfentanil is an opiate as defined in 21 U.S.C. 802(18) since it has an addiction-forming and addiction-sustaining liability similar to morphine. Consequently, carfentanil is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opinates, derivatives of opium and opiates."

Regulations that are effective on October 28, 1988, and imposed on carfentanil are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports carfentanil or who proposes to engage in carfentanil's manufacture, distribution, importation, exportation or research shall obtain a registration to conduct that activity by October 28, 1988, pursuant to Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Carfentanil must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a)(c)(d), 1301.73, 1301.74, 1301.75(b)(c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, carfentanil which is packaged and distributed after October 28, 1988, shall comply with the requirements of Sections 1302.03–1302.05 and 1302.07–1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for carfentanil are established pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants possessing carfentanil are required to take inventories pursuant to Section 1304.04 and Sections 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

6. *Records.* All registrants must keep records pursuant to Section 1304.04 and Sections 1304.21–1304.29 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants are required to file reports pursuant to Sections 1304.31–1304.41 of Title 21 of the Code of Federal Regulations.

8. *Order Forms.* Each distribution of carfentanil requires the use of an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* As carfentanil has been approved by the FDA for use in veterinary medical treatment, the drug may be dispensed by prescription. Prescriptions for carfentanil are to be issued pursuant to Sections 1306.01–1306.07 and Sections 1306.11–1306.15.

10. *Importation and Exportation.* All importation and exportation of carfentanil shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with carfentanil not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act continues to be unlawful. on October 28, 1988, carfentanil for the purposes of criminal liability shall be treated as a Schedule II narcotic controlled substance.

12. *Other.* In all other respects, this order is effective on October 28, 1988.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the scheduling of carfentanil, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). Carfentanil is being placed into Schedule II following its approval to be marketed as a narcotic anesthetic for use in veterinary clinics specializing in big game control. This rule will cause such establishments to handle carfentanil in a manner identical to that in place for other Schedule II products.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby orders that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

§ 1308.12 [Amended]

2. Paragraph (c) of § 1308.12 is amended by redesignating the existing paragraphs (c)(6) through (c)(24) as (c)(7) through (c)(25) and adding a new paragraph (c)(6) as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(6) Carfentanil—9743

* * * * *

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: October 19, 1988.

[FR Doc. 88-24974 Filed 10-27-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs, and of its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be June 30, 1989. This postponement will permit the uninterrupted use of this color additive while FDA receives and evaluates new information on FD&C Red No. 3 and prepares appropriate **Federal Register** documents for the regulation of this color additive.

EFFECTIVE DATE: October 28, 1988, the new closing date for FD&C Red No. 3 and its lakes will be June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Backgrond

Under Title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86-618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The agency's discretion in issuing such postponements is limited in only two respects: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." (*McIlwain* v. *Hayes*, 690 F.2d 1041, 1047 (DC Cir. 1982) and *Public Citizen* v. *Department of Health and Human Services*, No 86-5150 (decided in *Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (DC Cir. 1987)).)

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to postpone the closing date of FD&C Red No. 3. FDA proposed this postponement to allow the agency time to complete its evaluation of data from a new rat study being conducted by the Certified Color Manufacturers' Association (CCMA). This study is designed to demonstrate that FD&C Red No. 3 has no direct effect on the thyroid, i.e., that it operates through a secondary mechanism. This postponement also allows the agency to complete its evaluation of the sale and use data on FD&C Red No. 3, to make a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments, and to prepare the appropriate **Federal Register** documents for the regulation of this color additive. The agency concluded that these activities can be accomplished by June 30, 1989.

In response to the proposal, FDA received 34 comments from members of Congress, trade associations, food growers, food processors, a packer, a marketer, and a public interest group. Thirty-three comments supported the proposed postponement of the closing date. One comment (from Public Citizen, a public interest group) opposed the postponement.

FDA has carefully considered these comments and has also considered, in light of the comment opposing the proposed extension, whether this extension is appropriate under the standards set forth in *McIlwain* v. *Hayes*. The summary of the comments and the conclusions that the agency has reached follow:

II. Comments

A. Comments Supporting the Proposed Extension

The agency received 33 comments supporting the proposed extension. Five comments (from a cherry grower, two processors, a marketer, and a trade association) noted that June 30, 1989, is in the middle of the cherry growing season and requested an extension of the provisional listing for FD&C Red No. 3 until the end of the season (September 1, 1989).

The agency acknowledges the concern expressed by these five comments. However, the agency believes that it is important to resolve the issues relating to FD&C Red No. 3 as expeditiously as possible. The agency concludes that postponement of the closing date to June 30, 1989, provides a reasonable time period for the agency to receive and evaluate the new information from the CCMA study, to decide whether FD&C Red No. 3 can be permanently listed, and to develop the appropriate **Federal Register** documents. Thus, based on information currently available to it, the agency concludes that it is reasonably practicable for these steps to be completed by June 30, 1989. Further, the agency concludes that postponement of the closing date for the convenience of the users of the color additive would be inconsistent with the transitional provisions of the Color Additive Amendments.

B. Comment Opposing the Proposed Extension

The comment opposing the postponement asserted that FDA has provided no valid justifications for its extension of the provisional listing of FD&C Red No. 3. The comment further asserted that this extension is designed to delay, rather than to resolve, the provisional listing of the color additive. The comment based its opposition to the postponement on its brief filed in the United States Court of Appeals for the District of Columbia Circuit in *Public Citizen* v. *Department of Health and Human Services, supra*, and its July 19, 1988, comments objecting to the agency's previous extension of the provisional listing of FD&C Red No. 3 to August 30, 1988.

In opposing the proposed postponement of the closing date for provisional listing for FD&C Red No. 3, the comment listed four points. Although each is discussed separately below, most of the points are dealt with by the decision in *Public Citizen* v. *Young, supra*, 831 F.2d at 1122-1123. That decision establishes that postponement

of the closing date to June 30, 1989, is consistent with the purposes of the transitional provisions. In that case, the Court of Appeals upheld FDA's postponement of the closing data for FD&C Red No. 3, pending further evaluation of data to determine whether a secondary mechanism was responsible for the carcinogenic effect that was observed. The court held that the principles established in *McIlwain* v. *Hayes* were controlling. That is, the closing dates for provisionally listed color additives can be extended if such postponements are consistent with the public health and, in the Commissioner's judgment, the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable. The court further held that FDA had not unreasonably delayed its decision as to permanent listing, because unreasonable delay must be determined in the context of the transitional provisions, which allow "the time necessary for careful testing and also for careful review of data." (831 F.2d at 1123, n.19.) The four issues raised by the comment, and the agency's responses follow:

1. *Carcinogenicity of FD&C Red No. 3.* The comment asserted that, under the Delaney clause, FDA must ban all uses of FD&C Red No. 3. The comment stated that the long-term feeding studies on FD&C Red No. 3 have been completed for many years, and the agency previously concluded that they demonstrated that FD&C Red No. 3 causes tumors in animals. The comment cited *Public Citizen* v. *Young, supra,* to support its assertion.

The agency agrees with the comment that it had previously concluded that the data demonstrated that FD&C Red No. 3 caused tumors in animals. However, as the agency noted in its letter of September 2, 1988, written in response to Public Citizen's July 19, 1988, letter mentioned above (Ref. 2), some scientists believe these tumors are a result of a secondary mechanism caused by a hormonal imbalance that occurs only at high doses of FD&C Red No. 3. If such a mechanism can be demonstrated, it may be possible to prescribe by regulation conditions of use for FD&C Red No. 3 such that there is no reasonable expectation that its presence in the human diet would induce the formation of thyroid tumors. The letter further notes that the purpose of the extensions of the provisional list has been to provide time to resolve this scientific issue.

Public Citizen v. *Young* does not prevent the agency from postponing the closing date for FD&C Red No. 3. Although in that case the court held that the Delaney clause precluded the permanent listing of a carcinogenic color additive, the same panel held concurrently in *Public Citizen* v. *Department of Health and Human Services* that FDA could postpone the closing date for FD&C Red No. 3 even though the agency had previously concluded that the additive caused tumors in laboratory animals. In that case, the court stated that "There was a possibility * * * that the dye might have effected the rats' thyroid glands, with that effect in turn causing the tumors. *Id.* If this were established, then a no-effect level in rats might be established. *Id.; see also* 50 Fed. Reg. at 35,786–87. Until the agency arrives at a final decision as to this question, the question of the Delaney Clause's application is not ripe" (Ref. 1, p. 1123).

2. *Health risk from exposure to FD&C Red No. 3.* The comment asserted that the past findings regarding the safety of FD&C Red No. 3 place a greater burden on the agency and require the agency to act quickly on its provisional listing. The comment alleged that Government officials have recognized for a long time that FD&C Red No. 3 may pose serious health hazards to the public; the comment also noted that the recent panel report concluded that, even if FD&C Red No. 3 is permitted to stay on the market, limits on its use may be necessary. The comment submitted the Health Research Group's 1984 petition to ban FD&C Red No. 3 and the transcript of a radio interview of February 19, 1985, given by former Assistant Secretary of Health, Edward Brandt, to support its assertion.

The agency does not agree that FD&C Red No. 3 may pose serious health hazards to the public. In its extensions (including the recent proposed extension to June 30, 1989), the agency has evaluated the potential health risk to the public from the use of FD&C Red No. 3 during the time period of the extension and concluded that these extensions were consistent with the public health. The agency has concluded that the short-term exposure to FD&C Red No. 3 resulting from these relatively brief extensions does not present a safety concern. For this reason, and for the reasons stated in the August 30, 1988, proposal, the agency reaffirms its conclusion that the postponement of the closing date for the provisional uses of FD&C Red No. 3 and its lakes to June 30, 1989, does not present a public health hazard and is consistent with *McIlwain* v. *Hayes.*

The agency agrees, however, with the conclusions of its scientific review panel (see 53 FR 33147 at 33148) that in the future, if FD&C Red No. 3 is permitted to stay on the market, limits on its use may be necessary. To that end, the agency published notices in the **Federal Register** of November 19, 1987 (52 FR 44485), and December 21, 1987 (52 FR 48326), respectively, requesting data on specific uses of FD&C Red No. 3. In these notices the agency stated that it may be necessary for the agency to limit the aggregate uses of FD&C Red No. 3, i.e., to allocate the allowable uses of the color additive among all of its prevailing uses in food, drugs, and cosmetics. The issue the agency would address in this possible allocation would be the uses of FD&C Red No. 3 that are safe for chronic exposure over a lifetime (as opposed to its safe use during a relatively limited period of time).

The comment cited the Health Research Group's 1984 petition to ban FD&C Red No. 3 in support of its view. The agency has already responded to this petition (Ref. 3). In its response, the agency concluded that "the provisionally listed uses of this color additive do not present a hazard to the public that would warrant termination of provisional listing at this time." The issues raised in the 1984 petition were fully litigated in *Public Citizen* v. *Department of Health and Human Services.*

The comment also cited a radio interview with Edward Brandt, in support of its view. The agency notes that this interview with Brandt occurred after he had left the Department of Health and Human Services. Therefore, it does not necessarily represent the current opinion of the department or the agency. Furthermore, Brandt did not, in the interview, declare that current exposure to FD&C Red No. 3 is unsafe; he merely stated that he considered that the public health risk from exposure to certain other color additives (D&C Red Nos. 8, 9, 19, 37, and D&C Orange No. 17) was less significant than for FD&C Red No. 3.

3. *The secondary mechanism and the Delaney clause.* The comment asserted that there is no valid legal basis for this extension because the issue of an indirect or secondary mechanism is immaterial under the Delaney clause. The comment stated that, but for the ingestion of the dye, the animal tumors would not have been induced.

For the reasons discussed above, the agency does not agree with this comment. As the Court of Appeals stated in *Public Citizen* v. *Young, supra,* 831 F.2d at 1123, the question of the application of the Delaney clause is not

ripe until the agency has decided the secondary mechanism issue.

4. *Justification for extension.* The comment asserted that there is no valid justification for this extension. The comment stated that after being permitted to market FD&C Red No. 3 for many decades, the industry has still not shown that it is safe. The comment further stated that the agency has for many years been aware of the secondary mechanism issue but has provided no reason why it has not been resolved. The comment also stated that the agency has provided no explanation of why the new study was not done before and of how the study would be relevant to the agency's determinations. Finally the comment asserted that the agency has failed to explain why it will take from November 1988 (when the study will be completed), until June 30, 1989, to evaluate the results of the study.

The agency determined that it would take until June 30, 1989, to: (1) Evaluate the results of the new study on FD&C Red No. 3 in the context of all the available data relating to the secondary mechanism, (2) determine the appropriate course of action to take in light of all the available data on the safety of the color additive, and (3) prepare the **Federal Register** documents necessary to take this action. The issue of the secondary mechanism with regard to the action of FD&C Red No. 3 on thyroid function is difficult to evaluate because of the complex endocrine functions of the thyroid gland. Therefore, the agency needs more review time than would be expected, based on the nature of the ongoing study, in order to assess what implications those findings have on earlier studies. Furthermore, given the unique and controversial nature of the issues relating to FD&C Red No. 3, and the possibly significant economic impact of its decision, the agency requires adequate time to develop and review the necessary documents to implement its decision.

The agency has evaluated only a few cases where data suggest that the tumorigenic effect of a substance occurred through a secondary mechanism. These cases have not provided the agency with an adequate basis for developing general guidelines for determining the type of data that would unequivocably demonstrate a secondary mechanism. In each instance, the agency has evaluated the data submitted on a case-by-case basis and has determined whether the data demonstrated a secondary mechanism of action. The case of FD&C Red No. 3 is even more difficult to evaluate because of the complexity of the role of the thyroid hormones in the metabolic homeostasis of the organism. Nevertheless, the agency has sought to resolve the issue as presented by the report of its expert panel that the tumorigenic effect "is more likely to be the result of an indirect (secondary) mechanism." (See 53 FR 33147 of 33148.) The agency concluded that the ongoing CCMA study may produce results that are relevant to the secondary mechanism issue. The events leading to the CCMA study followed a logical progression. After initial review of the secondary mechanism issue, the agency decided that it needed the assistance of an expert panel. After the panel completed its work, the agency made the panel's report available to the public for review. CCMA subsequently informed the agency that it had decided to do an additional study in an effort to clarify the secondary mechanism issue. At the time the Court of Appeals decided *Public Citizen* v. *Department of Health and Human Services*, the agency had extended the provisional listing to allow the expert panel to complete its report. Thus, the additional steps, taken after the panel completed its report, are consistent with the decision in that case.

III. Environmental And Economic Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental effect statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities would derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined in Executive Order 12291.

IV. Conclusion.

The agency has carefully evaluated each of the comments submitted to the proposal of August 30, 1988, to postpone the closing dates for provisional listing of FD&C Red No. 3. Based upon this evaluation, the agency continues to believe that it is appropriate to postpone the closing date for the provisional listing of FD&C Red No. 3 so that the agency can consider the results of the CCMA study, as well as the sale and use data, before making a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments. Accordingly, the order set forth below would amend 21 CFR 81.1(a) and 81.27(d) to postpone the closing date to June 30, 1989, to provide sufficient time for the agency to take final action in this matter.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *Public Citizen* v. *Young*, 831 F.2d 1108, 1122–1123 (DC Cir. 1987).

2. Letter dated September 2, 1988, from Frank E. Young, Commissioner of Food and Drugs, to Katherine A. Meyer and William B. Schultz, Public Citizen Litigation Group.

3. Letter dated June 21, 1985, from Frank E. Young, Commissioner of Food and Drugs, to Sydney M. Wolfe, Director and Peter Lurie, Staff Researcher, Public Citizen Health Research Group.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (a) by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

Dated: October 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-25048 Filed 10-27-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8217, which was published in the Federal Register for Monday, August 8, 1988 (53 FR 29658). The final regulations relate to certain cash or deferred arrangements under employee plans.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide the public with the guidance needed to comply with the law and affect sponsors of plans that contain cash or deferred arrangements and employees who are entitled to make elections under these arrangements. They reflect changes in the applicable tax law made by the Revenue Act of 1978.

Need For Correction

As published, T.D. 8217 contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8217) which was the subject of FR Doc. 88-17720, is corrected as follows:

1. On page 29664, in the second column, in § 1.401 (k)-1 (a) (2) (i), in the last line, "of" should read "or".

2. On page 29671, in the first column, in § 1.401 (k)-1 (f) (3) (v), in the *Example*, in the second and third lines after the table, "(10.00% + 78.50%²" should read "((10.00% + 7.50%)/2)."

3. On page 29673, in the second column, in § 1.401 (k)-1 (h) (4) (iii) (A), in the next to the last line, "employer" should read "employee".

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 88-24991 Filed 10-27-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Utah State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of supplements to the Utah State plan.

SUMMARY: This document gives notice of Federal approval of amendments to the Utah Occupational Safety and Health Act which provide for rulemaking procedures similar to those of Federal OSHA, and an amendment to the Utah Administrative Rulemaking Act to remove inconsistent requirements for adopting rules and regulations.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

The Utah Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 10, 1973 (38 FR 1178). A determination of final approval was made under section 18(e) of the Act on July 16, 1985 (50 FR 28770). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Administrative Rulemaking Act

The State submitted on May 6, 1985, amendments to its Administrative Rulemaking Act (Chapter 46a, Title 63, Utah Annotated, 1953) effective April 29, 1985. The supplement contains Utah's amendments to its Administrative Rulemaking Act (section 63-46a-1 through 63-46a-15) which provide for rulemaking procedures similar to those of Federal OSHA.

The amendments are as follows:

(1) Section 63-46a-2 adds new definitions.

(2) Section 63-46a-3 provides new procedures for State agencies to use in maintaining complete copies of current rules and making them available to the public for inspection during regular business hours.

(3) Section 63-46a-4 provides additional provisions for State agencies to follow when making, amending, or repealing a rule. It also extends the public comment period from 20 days to 30 days.

(4) Section 63-46a-5 provides a set period of 30 days of receipt of the request for the requested hearing to be held.

(5) Section 63-46a-9, on the review of rules at five-year intervals, expands procedures for State agencies to use in providing supporting reason when they decide to continue the rule.

(6) Section 63-46a-10 adds provisions for the Office of Administrative Rules to administer the rulemaking process.

(7) Section 63-46a-11 provides procedures for the Legislative Review Committee to carry out its responsibility for oversight of the rulemaking process.

(8) Section 63-46a-13 clarifies the validity or applicability of a rule which may be determined in an action for declaratory judgment in any district court when it is alleged that the rule or its potential application, interferes with or impairs, the legal rights or privileges of the plaintiff.

B. Utah Occupational Safety and Health Act of 1973 (UOSH)

The State submitted on May 6, 1985, amendments to its Occupational Safety and Health Act (Chapter 69, Utah Code Annotated 1953). The amendments are as follows:

(1) Sections 35-9-3 and 35-9-6 were amended to bring the Act into conformance with the Utah Administrative Rulemaking Act and to remove inconsistent requirements for adopting rules and regulations.

(2) Section 35-9-8 was amended to authorize the Occupational Safety and

Health Division to seek administrative warrants under UCA 77–23–11, when an employer refuses to permit entry. UCA 77–23–11 provides that magistrates, on showing of probable cause that a safety, health, etc., rule has been violated, may issue a warrant.

(3) Sections 35–9–10, 35–9–11 and 35–9–12 were amended to clarify Review Commission procedures for internal review of a hearing examiner's decision and to provide for judicial review by District Courts and appeal to the Utah Supreme Court. This amendment also consolidates into one law Utah's procedures relating to the review commission.

(4) Section 35–9–6 was amended to provide that Utah shall issue a permanent standard no later than 120 days after publication of an emergency standard instead of six months.

Location of Supplement for Inspection and Copying

A copy of the plan and the supplement may be inspected and copied during normal business hours at the following locations:

Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80202; the Utah Industrial Commission, UOSHA Offices at 160 East Third South, Salt Lake City, Utah 84111–5800; and the Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the State's revisions to its Administrative Rulemaking Act and Occupational Safety and Health Act were adopted in accordance with procedural requirements of the law, which included the opportunity for public participation. Good cause is therefore found for approval of this supplement, and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Utah plan supplement described above is found to be in substantial conformance with comparable Federal provisions and is hereby approved under Part 1953 of this chapter. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 24th day of October, 1988

John A. Pendergrass,

Assistant Secretary.

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. A new § 1952.117 is added to Subpart E to read as follows:

§ 1952.117 Changes to approved plans.

In accordance with Part 1953 of this chapter, the following Utah plan changes were approved by the Assistant Secretary:

(a) *Legislation.* (1) The State submitted an amendment to the Utah Administrative Rulemaking Act (Chapter 46a, Title 63, Utah Code Annotated 1953), which became effective on April 29, 1985, which provides for rulemaking procedures similar to those of Federal OSHA in sections pertaining to expansion of definitions; availability of proposed rule to the public; a set time period allowed for public comment; the time period provided for a requested hearing to be held; and, provisions for determining the validity or applicability of a rule in an action for declaratory judgment. The Assistant Secretary approved the amendment on October 24, 1988.

(2) The State submitted amendments to its Occupational Safety and Health Act (Chapter 69, Utah Code Annotated 1953), which became effective on April 29, 1985, which provide for seeking administrative warrants, clarify review procedures for the hearing examiner, provide for issuing a permanent standard no later than 120 days after publication of an emergency standard, and remove inconsistent requirements for adopting rules and regulations. The Assistant Secretary approved the amendments on October 24, 1988.

[FR Doc. 88–24941 Filed 10–27–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg 340–21]

The Army Privacy Program

AGENCY: Department of the Army, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Army is amending its rule for administering the Privacy Act by revising Access and Amendment Refusal Authority responsibilities resulting from reorganizations.

DATES: Effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

SUPPLEMENTARY INFORMATION: This amendment shifts responsibilities for Access and Amendment Refusal Authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. Access and Amendment Refusal Authority responsibility for the functions of the Comptroller of the Army (for financial records) has been absorbed by the Administrative Assistant to the Secretary of the Army. The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 505

Information, Archives and Records, Privacy, Freedom of Information.

Dated: October 20, 1988.

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

PART 505—[AMENDED]

The authority citation for 32 CFR Part 505 continues to read as follows:

Authority: 5 U.S.C. 552a (Pub. L. 93–579); DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11 R, August 31, 1983.

§ 505.1 [Amended]

1. 32 CFR Part 505.1 is amended by revising paragraph (g) as follows:

* * * * *

(g) Access and Amendment Refusal Authority (AARA). Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below and their designees, are the only Access and Amendment Refusal Authorities for records in their functional areas:

(1) The Administrative Assistant to the Secretary of the Army, is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, as well as those requests requiring the personal attention of the SA.

(2) The Inspector General for IG investigative records.

(3) The President or Executive Secretary of Boards, councils, and similar bodies established by the Department of the Army to consider personnel matters, excluding the Army Board of Correction of Military Records.

(4) The Deputy Chief of Staff for Personnel: For records of active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service; alcohol and drug abuse treatment records; and behavioral science records.

(5) The Deputy Chief of Staff for Operations and Plans: For military police records and reports and prisoner confinement and correctional records.

(6) Chief of Engineers: For records pertaining to civil works, including litigation; military construction; engineer procurement; other engineering matters not under the purview of another AARA; ecology; and contractor qualifications.

(7) The Surgeon General: For medical records, except those property part of the Official Personnel Folder (OMP/GOVT–1 system of records).

(8) Chief of Chaplains: For ecclesiastical records.

(9) The Judge Advocate General: For legal records for which responsible.

(10) Chief, National Guard Bureau: For personnel records of the Army National Guard.

(11) Chief of Army Reserve: For personnel records of Army retired, separated and reserve military personnel members.

(12) Commander, United States Army Material Command (AMC): For records of Army contractor personnel of AMC.

(13) Commander, United States Army Criminal Investigation Command (USACIDC): For criminal investigation reports and military police reports included therein.

(14) Commander, United States Total Army Personnel Agency: For personnel and personnel related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in an OPM system of records such as the Official personnel Folder should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW, Washington, DC 20415–0001.)

(15) Commander, U.S. Army Community and Family Support Center: For records relating to morale, welfare and recreation activities; community life programs; family action programs; retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with DA relationships and social security, veterans' affairs, United Service Organizations, U.S. Soldiers' and Airmen's Home and American Red Cross.

(16) Commander, U.S. Army Intelligence and Security Command: For Army intelligence, security investigative and related records.

(17) Commander, Army and Air Force Exchange Service: For records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(18) Commander, Military Traffic Management Command: For transportation records.

(19) Director of Army Safety: For safety records.

(20) Commander, U.S. Army Information Systems Command: For records which do not fall within the functional area of another AARA.

* * * * *

[FR Doc. 88–24994 Filed 10–27–88; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permits the Chief of the Forest Service to authorize the noncompetitive sale of minerals of more than 200,000 cubic yards upon a finding that the larger volume is necessary to respond to emergency situations, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands. The intended effect is to allow the Forest Service to respond to such circumstances in an orderly and expeditious manner when necessary to protect the public health or safety or to avoid severe economic repercussions from circumstances beyond the prospector's or operator's control .

DATE: This rule is effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Marshall, Minerals and Geology Staff, Forest Service, USDA, (703) 235–3142.

SUPPLEMENTARY INFORMATION: The Materials Act of July 31, 1947 (30 U.S.C. 601 *et seq.*) allows the Secretary of Agriculture to sell mineral materials noncompetitively where their competitive sale would be impracticable. Existing regulations at 36 CFR Part 228, Subpart C covering sales of mineral materials limit the noncompetitive sale of mineral materials to 200,000 cubic yards or weight equivalent to any entity per year per State. These regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. The existing regulations do not provide for situations where the disposal of larger quantities of mineral materials is necessary to respond to emergency situations affecting public health, safety, or property, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases issued by the United States or mining claims located under the United States mining laws.

On April 2, 1987, the Forest Service published an interim rule (52 FR 10564) permitting the Chief of the Forest Service to authorize the noncompetitve sale of minerals in certain limited circumstances. The need for some method of granting exceptions to the

200,000 cubic yard limitation arose from a situation in California wherein a claimant mining locatable minerals on a National Forest might have been forced to periodically cease operations because the claimant was close to exceeding the 200,000 cubic yard limitation on sand and gravel then in effect. This claimant has a mining operation for locatable minerals which yields sand and gravel as a by-product. Since the sand and gravel production is an integral part of the mining operation, it is impractical to offer the material competitively. Thus, the sand and gravel had been disposed of through noncompetitive sales to the claimant.

Prior to 1987, by-product sand and gravel had been of small enough volumes that the yardage limitation had not posed a problem. However, in 1987, increased production of locatable minerals began. This resulted in more sand and gravel being produced than could have been accommodated noncompetitively under the existing regulations. This situation convinced the Agency that it needed the flexibility to meet such needs in the future, wherever they may arise.

In addition to this type of production situation, future emergency needs for disposal of more than 200,000 cubic yards of mineral materials might not permit the time-consuming competition required by 36 CFR 228.58. An emergency might include a situation such as large volumes of sand and gravel being needed for constructing dikes during floods. Without a means to exceed the volume limitations, the Agency could not legally respond to such an emergency.

Thus the Agency promulgated an interim rule that allowed the Chief to authorize noncompetitive sale of larger volumes upon a finding that the larger volume is necessary: (1) To respond to emergency situations; (2) to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product; or, (3) to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands.

The Forest Service invited the public to comment on the interim rule for consideration in development of this final rule. However, no public comments were received.

The interim rule has been applied three times during the year it has been in effect. In addition to the previously cited situation, it was used in connection with a locatable mineral operation in Alaska and with a leasable mineral operation in Wyoming. The interim rule proved to be an effective remedy in all three of the situations in which it was applied.

Therefore, in light of Agency experience under the interim rule and the absence of any comments on the rule, the Department is adopting the interim rule as a final rule without change. Because the interim rule has been in place for a year and the final rule is identical to the interim, good cause exists for making the rule effective upon publication.

This rule has been reviewed under Executive Order 12291 and USDA procedures and it has been determined that this rule is not a major rule. Additionally, it will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This authority is equally applicable to all entities, whether large or small. The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

Based on both past experience and environmental analysis, this final rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 228

Administrative practice and procedure; Environmental protection; Mines; National forests; Public lands—Mineral resources; Rights of way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

PART 228—MINERALS

Subpart C—Disposal of Mineral Materials.

Therefore, for the reasons set forth in the preamble, the interim rule amending 36 CFR 228.59, which was published at 52 FR 10564 on April 2, 1987, is adopted as a final rule without change.

Date: October 6, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-25012 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3449-1]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rulemaking takes final action to approve the carbon monoxide (CO) state implementation plan (SIP) for the Wichita, Kansas, area. EPA proposed approval of the Wichita CO plan on March 31, 1988 (53 FR 10399) in response to a submittal from the Kansas Department of Health and Environment. EPA received no comments from the public during the comment period. Today's action will make the Wichita CO SIP completely approved.

EFFECTIVE DATE: November 28, 1988.

ADDRESSES: Copies of the state submission are available for public inspection at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8964), EPA designated a portion of Wichita, Kansas, nonattainment with respect to the CO primary National Ambient Air Quality Standard (NAAQS) as required by Section 107(d) of the Clean Air Act, as amended in 1977.

The state submitted a CO plan for Wichita on April 16, 1981. This plan was approved by EPA on January 22, 1982 (47 FR 3113). On February 3, 1983 (48 FR 4972), EPA identified Wichita, Kansas, as a nonattainment area unlikely to attain the CO standard by the December 31, 1982, attainment date. This determination was based upon air quality data from 1980, 1981, and 1982. Violations were found in each of those years.

On February 29, 1984, EPA notified the state of Kansas under authority of Section 110(a)(2)(H) of the Act, that the CO SIP for Wichita was substantially inadequate to attain the CO standard.

EPA extended the time required under section 110(c)(1)(C) for plan revision to one year. EPA requested that the state submit a schedule for plan development within 60 days of the date of notification. EPA received that schedule on May 23, 1984.

In response to the call for a SIP revision, the state of Kansas submitted a revised CO SIP for Wichita on March 1, 1985. Since there are no significant stationary CO sources in Wichita, the original plan approved by EPA depended upon transportation control measures (TCM) for CO emissions reductions. The plan revision submitted in 1985 contained an additional TCM and a commitment to continue the city's voluntary inspection and maintenance (I/M) program through 1986. Further, the plan submittal contained a modeling analysis projecting attainment of the CO standard by 1987 even without additional TCMs. Most of the CO emissions reductions were because of federally mandated automobile emissions control. This modeling study was included as part of the attainment demonstration.

The 1985 SIP revision contained a request for redesignation to attainment. The modeling analysis and air quality monitoring data were sufficient to support redesignation. EPA proposed approval of the SIP revision and the redesignation request on December 20, 1985 (50 FR 51867). For a more detailed discussion on the rationale for approval, the reader should review the **Federal Register** notice cited above and the technical support document.

EPA did not proceed to final rulemaking on the December 20, 1985, proposed rule for three reasons: (1) the one TCM in the SIP revision was discontinued by the city, (2) there was a discontinuity in the CO monitoring data, and (3) violations were recorded in March 1986. Thus, EPA was unable to approve the revision at that time. Additionally, on May 14, 1986, the KDHE advised EPA that since there was inadequate CO data upon which to base a redesignation, EPA should withhold further action on the redesignation request.

On September 3, 1987, KDHE submitted supplemental information applicable to the Wichita CO SIP. The submittal included two new TCMs adopted by the Wichita City Council to replace the discontinued TCM. On March 3, 1988 (53 FR 10399), EPA again proposed approval of the Wichita CO SIP including the supplemental TCMs. That notice also withdrew the redesignation proposal because of insufficient data to support redesignation to attainment for CO. That proposed rulemaking acknowledged there were three quarters of data in1986 and three quarters in 1987 showing no exceedance of the CO air quality standard. No comments were received on the proposal.

Wichita appeared on the list of potential SIP call areas in Appendix A of EPA's proposed ozone and carbon monoxide policy (52 FR 45044, November 24, 1987). However, EPA examined the CO monitoring data from Wichita and found no exceedances in 1987 and no exceedances in the first quarter 1988. These air quality data support the Wichita modeling study that projected attainment by December 31, 1987. For the reasons discussed above, EPA believes the SIP is adequate for attainment and maintenance of the CO standard. ACTION: EPA approves the Wichita CO SIP revision submitted on March 1, 1985, with the two new TCMs replacing the left turn ban contained in the control strategy in that submittal. These new TCMs are: (1) computerized signalization project, and (2) the overpass over Kellogg Avenue as part of the Wichita CO SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements, Incorporation by reference.

Note: Incorporation by reference of the SIP for the state of Kansas was approved by the Director of the **Federal Register** on July 1, 1982.

Date: September 12, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart R, is amended as follows:

PART 52—[AMENDED]

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(22) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(22) On March 1, 1985, the Governor of Kansas submitted a revised carbon monoxide state implementation plan for Wichita, Kansas. On September 3, 1987, The Kansas Department of Health and Environment submitted two new transportation control measures as part of the revised Wichita carbon monoxide control plan.

(i) Incorporation by reference. (A) Letter of September 3, 1987, from the Kansas Department of Health and Environment and attached transportation control measures adopted August 18, 1987.

(B) Revision of the Wichita-Sedgwick County Portion of the Kansas State Implementation Plan for Carbon Monoxide submitted by the Governor on March 1, 1985. The plan contains an attainment demonstration, emissions inventory, and a control strategy.

3. The table in § 52.879 is revised to read as follows:

§ 52.879 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead
	Primary	Secondary	Primary	Secondary				
Metropolitan Kansas City Interstate	e	a	c	c	c	5/31/77	e	c
South Central Kansas Intrastate	a	a	c	c	c	g	a	c
Northeast Kansas Intrastate	a	a	c	c	c	c	e	c

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead
	Primary	Secondary	Primary	Secondary				
Southeast Kansas Intrastate	c	c	c	c	c	c	c	c
North Central Kansas Intrastate	a	a	c	c	c	c	c	c
Northwest Kansas Intrastate	a	a	c	c	c	c	c	c
Southwest Kansas Intrastate	a	a	c	c	c	c	c	c

NOTE: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Act Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1980) § 52.879.

a. July 1975.
b. Five years from plan approval or promulgation
c. Air quality levels presently below secondary standards.
d. Transportation and/or land use control strategy to be submitted no later than April 15, 1973.
e. December 31, 1982.
f. Secondary standard attainment date to be determined by secondary attainment plan.
g. EPA called for a SIP revision on February 29, 1984. EPA approved the new attainment date of December 31, 1987, in the revised Wichita CO SIP.

[FR Doc. 88-21265 Filed 10-27-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6813]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community Number	Effective date
Kentucky	Martin, City of	Floyd	210071	Nov. 4, 1988.
Delaware	Bethany Beach, Town of	Sussex	105083	Nov. 18, 1988.
Do	Blades, Town of	Sussex	100031	Do.
Do	Bridgeville, Town of	Sussex	100032	Do.
Do	Cheswold, Town of	Kent	100004	Do.
Do	Clayton, Town of	Kent	100005	Do.
Do	Felton, Town of	Kent	100008	Do.
Do	Harrington, City of	Kent	100010	Do.
Do	Little Creek, Town of	Kent	100015	Do.
Do	Middletown, Town of	New Castle	100024	Do.
Do	Rehoboth Beach, City of	Sussex	105086	Do.
Do	Slaughter Beach, Town of	Sussex	100050	Do.
Do	Wyoming, Town of	Kent	100020	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-24931 Filed 10-27-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6812]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Texas:			
Kountze, city of	Hardin	480845	Sept. 2, 1988, suspension withdrawn.
La Vernia, city of	Wilson	481050	Do.
Lake Ransom Canyon, village of	Lubbock	481577	Do.
Morton, city of	Cochran	480127	Do.
Normangee, city of	Leon	480436	Do.
Primera, town of	Cameron	481198	Do.
Reno, city of	Lamar	481254	Do.
Shepherd, city of	San Jacinto	480554	Do.
Trinity, city of	Trinity	481033	Do.

State and community name	County	Community No.	Effective date
Tuscola, city of	Taylor	481017	Do.
Florida:			
Pahokee, city of	Palm Beach	120219	Do.
Pembroke Park, town of	Broward	120052	Do.
Kentucky:			
Unincorprated areas	Rowan	210203	Do.
South Shore, city of	Greenup	210091	Do.
Taylor Mill, city of	Kenton	210246	Do.
North Carolina:			
Kill Devil Hills, town of	Dare	375353	Do.
Unincorporated areas	Lenoir	370144	Do.
Kinston, city of	Lenoir	370145	Do.
Bayboro, town of	Pamlico	370183	Do.
Vandemere, town of	Pamlico	370438	Do.
South Carolina:			
Port Royal, town of	Beaufort	450028	Do.
Sullivans Island, township of	Charleston	455418	Do.
Tennessee:			
Rockwood, city of	Roane	475443	Do.
Unincorporated areas	Rutherford	470165	Do.
Unincorporated areas	Sumner	470349	Do.
Tazewell, city of	Claiborne	475449	Do.
New York:			
Amsterdam, city of	Montgomery	360440	Do.
Ancram, town of	Columbia	361312	Do.
Arkport, village of	Steuben	360763	Do.
Black Brook, town of	Clinton	361309	Do.
Boonville, town of	Oneida	360519	Do.
Broadalbin, village of	Fulton	361128	Do.
Canastota, village of	Madison	360393	Do.
Cazenoria, village of	Madison	360394	Do.
Clinton, town of	Dutchess	361334	Do.
Deposit, village of	Delaware	360043	Do.
Fort Edward, village of	Washington	361536	Do.
Grand View-on-Hudson, village of	Rockland	360680	Do.
Greenport, village of	Suffolk	361004	Do.
Hardenburgh, town of	Ulster	361578	Do.
Herkimer, village of	Herkimer	360306	Do.
Hornell, city of	Steuben	360776	Do.
Hornellsville, town of	Steuben	360777	Do.
Huntington Bay, village of	Suffolk	361543	Do.
Islip, town of	Suffolk	365337	Do.
Martinsburg, town of	Lewis	360372	Do.
Morristown, village of	St. Lawrence	360706	Do.
New Castle, town of	Westchester	360921	Do.
Orangetown, town of	Rockland	360689	Do.
Florida:			
Pembroke Pines, city of	Broward	120053	Sept. 30, 1988, suspension withdrawn.
Sebastian, city of	Indian River	120123	Do.
Unincorporated areas	Seminole	120294	Do.
St. Cloud, city of	Osceola	120191	Do.
Tamarac, city of	Broward	120058	Do.
Georgia:			
Camilla, city of	Mitchell	130137	Do.
Kentucky:			
Calvert City, city of	Marshall	210164	Do.
Unincorporated areas	Carter	210050	Do.
Evarts, city of	Harlan	210101	Do.
Mississippi:			
Ruleville, town of	Sunflower	280167	Do.
Satartia, town of	Yazoo	280205	Do.
North Carolina:			
Bladenboro, town of	Bladen	370020	Do.
Unincorporated areas	Bladen	370293	Do.
Unincorporated areas	Lee	370331	Do.
Unincorporated areas	Orange	370342	Do.
Tennessee:			
Franklin, city of	Williamson	470206	Do.
Germantown, city of	Shelby	470353	Do.
Goodlettsville, city of	Davidson/Sumner	470287	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-24932 Filed 10-27-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

[Docket No. 88-17]

46 CFR Part 571

Interpretations and Statements of Policy

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule states that common carriers or conferences may not require a shippers' association to obtain or apply for a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process. The rule is intended to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

DATE: Effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") initiated this proceeding by publication in the **Federal Register** of a proposed rule stating that common carriers or conferences may not require the production of a Business Review Letter ("BRL") from the Department of Justice ("DOJ") [1] prior to or as part of a service contract negotiation process with a shippers' association. 53 FR 27178, July 19, 1988. Comments on the proposed rule were solicited, and the Commission received seven responses. Upon review of those comments, the Commission has determined to adopt an amended version of the proposed rule.

As stated in the Supplementary Information section of the proposed rule, there have been several Commission pronouncements, as well as advice contained in speeches and BRLs from the Department of Justice, to the effect that there is no reason for a carrier or conference to require, as part of the service contract negotiation process, a shippers' association to obtain a BRL. It has been noted that carriers and conferences do not risk antitrust exposure by negotiating in good faith with parties representing themselves as shippers' associations, provided that the conference agreement authorizes such negotiations. DOJ, however, has indicated that despite these assurances, shippers' associations continue to request BRLs, allegedly because conferences refuse to negotiate with them unless they have one.

Thus, DOJ, in order to abate what it considers the unnecessary expenditure of its resources inherent in preparing repetitive letters, requested the Commission to initiate a proceeding to clarify its views on the matter. The Commission accordingly proposed the instant interpretive rule. The proposed rule was also intended to eliminate unnecessary impediments to the operation of shippers' associations and to discourage violations of section 10(b)(13) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(b)(13), which prohibits carrier and conferences from refusing to negotiate with a shippers' association. To this end, the proposed rule states in relevant part that:

> a common carrier or conference may not require a shippers' association to obtain or produce a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

Comments

Five of the comments received in response to the proposed rule are from shipper or shippers' association interests. The National Federation of Export Associations ("NFEA"), the North American Shippers Association, Inc. ("NASA"), and the National Association of Export Companies ("NEXCO") all support the proposed rule as written. NASA and NEXCO state that the rule should serve to strengthen and develop shippers' associations. NFEA opines that requiring BRLs prior to negotiating with shippers' associations "results not from apprehension regarding possible antitrust violation, but rather a desire to construct artificial impediments to good faith negotiations."

The First National Shippers Association ("FISA") states that while the Proposed Rule would serve a useful purpose, it does not go far enough. FISA contends that carriers frequently refuse to negotiate with shipper's associations in many, sometimes subtle, ways, of which the "delaying tactics" of requesting BRLs are not one.[2] FISA proposes that the Commission finalize the Proposed Rule with an additional provision cautioning that individual carrier activities or patterns of behavior may constitute tacit refusals to deal, in contravention of sections 10(b)(13) and 10(c)(1) of the 1984 Act. FISA also would have the Final Rule state that the Commission shall therefore "establish procedures whereby shippers' associations can bring to the Commission's attention such patterns of behavior and the Commission will review such patterns" to determine whether enforcement actions are necessary.

FISA's suggestions have not been adopted herein. FISA's comments address broad issues concerning shippers' association-conference relationships which are not encompassed in the Proposed Rule and which are therefore outside the scope of this proceeding. The proposed rule is narrow in scope, and the parties were invited to comment only on the narrow issue presented. Moreover, there would seem to be little purpose served or guidance provided in issuing a statement acknowledging that some Shipping Act violations may be performed in subtle ways. This is not a phenomenon peculiar to conferences and the service contract negotiation process; it is likely to be equally true of any statutory violations.

We are also not adopting FISA's suggestion that the Commission use the Final Rule to announce that it "shall establish procedures" for complaints about such practices. Such procedures do exist—in the Commission's general Rules of Practice and Procedure governing the filing of complaints. Separate, specialized complaint procedures for allegations of violations of section 10(b)(13) have not been shown to be necessary. Finally, the Interpretive Rule mechanism is intended to advise of statutory interpretations, not to serve as a forum for public announcements of future Commission actions.

The American Institute for Shippers' Associations, Inc. ("AISA") claims that conferences impose many "conditions precedent" to negotiations which constitute unnecessary burdens and impediments to the formation and operation of shippers' associations. AISA argues that there is no valid purpose that could be served by

---

[1] BRLs are documents, issued on request by DOJ's Antitrust Division, which review proposed business conduct and state DOJ's enforcement intentions with respect to that conduct. See 28 CFR 50.6.

[2] FISA contends that carriers also insist on: dealing only with individual members rather than the designated association negotiator; claiming logistical problems in meeting to consider association proposals; rejecting reasonable association contracts, sometimes while instituting even lower rate decreases; or establishing attractive volume incentive plans for shippers which render association participation unnecessary.

conferences requesting to see a BRL, and that such actions should be reviewed simply as a matter of discrimination and refusal to negotiate. Although AISA notes and concurs with the Commission's admonishment that comments on the Proposed Rule be limited to the narrow issue presented, it nevertheless suggests that the Proposed Rule be broadened to include: (1) Negotiations on all matters—*e.g.*, independent action, time-volume rates, or loyalty contracts—not just service contracts; and (2) all forms of legal clearances—*e.g.*, Federal Trade Commission advisory opinions and export trade certificates—not just BRLs.

AISA's proposal that the rule be broadened to include other types of negotiations and other types of legal clearances is, like FISA's suggestions, outside the scope of this proceeding. The amendments urged by AISA could involve facts and considerations beyond those discussed in the Proposed Rule and commented upon in the responses received. Should the Commission determine that conference requirements for other documents are impeding service contract negotiation processes, or that similarly burdensome requirements have become prevalent in negotiations other than for service contracts, such matters could be addressed at that time as necessary. In the meantime, nothing precludes shippers' associations from filing formal complaints alleging section 10(b)(13) violations, or from informally bringing to the Commission's attention any difficulties they are having in this regard.

The remaining two comments are from conference interests. The Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("the Conferences") note that they publish a rule in their tariffs that requires shippers' associations to provide them a copy of any BRL *already* obtained. The Conferences emphasize that they do not attempt to *require* shippers' associations to apply for such a letter. But BRLs are said to "contain a source of relevant basic information concerning the association, its status and its intentions to function as a proper statutory entity." They claim that if "qualified or unfavorable" letters have been issued, the Conferences have a legitimate interest in knowing about them so as to avoid "Shipping Act or antitrust exposure." They therefore object to that part of the Proposed Rule which would prohibit carriers from requiring the production of BRLs, and suggest an amendment to the rule which would permit a conference requirement that shippers' associations provide copies of such letters which they may have already voluntarily secured. The Transpacific Westbound Rate Agreement ("TWRA") also states that although it does not require shippers' associations to apply for BRLs, it requests that the Commission permit the production of such documents already issued.[3]

The Conferences' argument that seeing an already-obtained BRL "is of utmost relevance to conferences" in ascertaining the holder's "identity and statutory qualifications" is not wholly persuasive. It is not clear how such a letter would provide assistance to a conference in this regard.[4] Also, the point of this interpretive rule is that a shippers' association's bona fides has no impact on a carrier's or conference's antitrust exposure.

However, given that a major purpose of this rulemaking is to prevent impediments to the negotiation process, it does not appear that, as a general matter, providing a copy of a letter already in one's possession would impede or delay that proces. Nor would production of a letter generally cause any breach of confidentiality. BRLs are routinely made publicly available by the Department of Justice.

The Commission has therefore determined to delete the word "produce" from § 571.1(b) of the proposed rule, so that the Final Rule does not prohibit a conference from requesting such letters already in the possession of a shippers' association. The basic premise of the Final Rule—that application for a BRL should not be a condition precedent to service contract negotiation—has been supported by all parties commenting in this proceeding. To this end, the final rule has been limited to providing only that a conference may not require an association to "obtain or apply for" a BRL. The addition of the words "apply for" does not broaden the scope of the Proposed Rule, but rather clarifies the type of impositions on shippers' associations which the conference may not require. The deletion from the Proposed Rule of the word "produce" reflects the Commission's determination that no regulatory purpose would be served by extending the rule to prohibit a practice—*i.e.*, requesting to see letters *already* in the *possession* of a shippers' association—which is not ordinarily burdensome. Although not proscribing this practice as a matter of law, the Final Rule should not be read as approving or even encouraging it.[5] Nor does the Final Rule affirmatively require any particular action on the part of a shippers' association or a conference in the event such a request is made. Issues arising from unusual circumstances concerning a request for an existing BRL can be addressed on a case-by-case basis.

Finally, TWRA objects to language contained in the Supplementary Information to the Proposed Rule which, it says, may be read to constitute standards precluding conferences from obtaining legitimate commercial and legal status information concerning shippers' associations. TWRA explains that it sometimes requests information such as the list of an association's officers. TWRA fears that such practices may be attacked by those reading too broadly the FMC statement in the Supplementary Information that:

> Regardless of a conference's motive, a refusal to negotiate with a shippers' association pending receipt of documentation which has been established to be clearly unnecessary or immaterial constitutes a section 10(b)(13) violation.

The "unnecessary or immaterial" language is so subjective, TWRA contends, that, if treated as a standard for future *ad hoc* determinations, it would generate controversy, fail to provide adequate guidance, and preclude such relevant considerations as motive and the *de minimis* burdensomeness of the request. Therefore, it argues, the Commission should amend this language to clarify that it is not intended to serve as a standard for any prospective conference practices which the Commission has not specifically addressed.

TWRA is correct that the narrow rule proposed should not be interpreted as attempting to establish whether *prospective, previously unaddressed* requests for documents are lawful.

---

[3] Unlike the Conferences, however, TWRA does not read the Proposed Rule as prohibiting this practice, and requests no amendment to the Proposed Rule in this regard.

[4] AISA, citing a 1985 BRL to the Beverage Importers' Freight Association, claims that DOJ has "clearly stated that it renders no opinion on whether the association is a 'bona fide' shippers' association within the meaning of the Shipping Act of 1984."

[5] In 1985, the Commission specifically rejected a petition suggesting that shippers' associations be *required* by FMC rule to produce already-obtained Business Review Letters. *See In the Matter of Petition for Rulemaking Concerning Shippers' Associations*, Order Denying Petition, 22 S.R.R. 1625 (February 11, 1985). The instant Final Rule does not alter the determination that a commercial practice which is of questionable benefit should not be made mandatory by Commission regulation. Rather, the instant Final Rule reflects, in part, the complementary principle that a commercial practice which is not as a general matter burdensome will not ordinarily be enjoined.

However, TWRA's fears of a misinterpretation or misapplication of the rule do not appear to be well founded. The provision it objects to already refers to "documentation which *has been established* to be clearly unnecessary or immaterial * * * *" (Emphasis added.) It is unlikely, therefore, to be interpreted to refer to requests which have not been addressed by the Commission, as feared by TWRA. Moreover, the provision is not part of the Proposed Rule, but is merely meant to explain the necessity of the rule, which in turn clearly refers only to requests for BRLs, and in the context of service contract negotiations. We, therefore, do not find it necessary to amend any language in the proposed rule.

List of Subjects in 46 CFR Part 571

Antitrust, Contracts, Maritime carriers, Shippers' associations.

Therefore, pursuant to 5 U.S.C. 553, and secs. 7, 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1706, 1707, 1709 and 1716) the Federal Maritime Commission adds a new Part 571 to Subchapter D of Title 46 of the Code of Federal Regulations as follows:

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shipper's associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shipper's association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-24907 Filed 10-27-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

AGENCY: Department of Defense (DOD).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule replaces in its entirety the interim rule that was published for public comment on April 1, 1988, 53 FR 10780. Revisions have been made based on an analysis of the public comments received in response to the April 1 interim rule.

DATES: *Effective:* The rule is effective for all solicitations and resulting contracts issued on or after October 31, 1988. Solicitations issued prior to October 31, 1988, for which the date set for receipt of offers has not passed, shall be amended to incorporate provisions and clauses of the revised interim rule. Where the date for receipt of offers has passed, and discussions will otherwise be held, the provisions and clauses of the revised interim rule will be made a part of the request for best and final offers, unless the contracting officer determines that inclusion of the revised coverage would significantly delay the award of the contract.

Comment: Comments on the interim rule should be submitted to the address shown below not later than (30 days from date of November 28, 1988).

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-303 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background.

An interim rule was published on April 1, 1988, to implement section 808 of Pub. L. 100-180 which required that the rule be effective no later than April 4, 1988. A total of 44 comments were received and evaluated by the DAR Council. Several significant issues were raised in the public comments. As a result, the following major changes are being made to the regulations.

First, the definition of "required as an element of performance under a Government contract or subcontract" was considered to be overly broad and could be interpreted to give the Government unlimited rights in technical data resulting from private development. The definition has been revised to encompass only development that was both accomplished during and necessary for performance of a Government contract or subcontract.

Second, the regulation has been revised to clearly state the Government's policy to protect technical data pertaining to a privately developed commercial item. It is not the Government's policy to obtain technical data or data rights for the competitive acquisition of privately developed commercial items. Specific approvals are now required before acquiring data or rights in data greater than those afforded in 10 U.S.C. 2320(a)(2) (c) and (d) pertaining to such items.

Third, the provisions in the interim rule that the Government would have unlimited rights in any data not included in a list in the contract have been eliminated in the revised interim rule.

Fourth, the notification and listing procedures have been revised to simplify and clarify the process for establishing rights in data. The coverage has been revised to clarify that the listing process does not accelerate the validation process and is not a final determination of rights. The former provisions at 252.227-7035, Preaward Notification, and at 252.227-7038, Listing and Certification of Development of Technology with Private Funding, have been merged into paragraphs (j) and (k) of the basic data rights clause, 252.227-7013.

Fifth, the requirement that offerors and contractors submit development cost data when notifying the Government that items were developed in part at private expense has been deleted, since in many cases this would be unnecessary burden. However, the contracting officer may still request this data, where necessary. Also, the certification has been changed to a representation that need only be provided when the offeror or contractor notifies the government of its intent to limit the government's rights in technical data.

Sixth, the responsibility of prime contractors to recognize and protect their subcontractor's data rights, while satisfying their contracts with the Government, has been emphasized.

Finally, guidance to the contracting officer concerning negotiations has been clarified and other minor revisions have

been made as a result of the analysis of public comments.

B. Regulatory Flexibility Act

A revised Regulatory Flexibility Analysis is necessary and is being provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties may obtain a copy of the Analysis by submitting a written request to the individual listed above.

C. Paperwork Reduction Act

This interim rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Accordingly, an emergency information collection clearance request has been submitted to OMB pursuant to 5 CFR 1320.18. Public comments concerning that request will be invited by OMB through a subsequent Federal Register notice.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this coverage. Section 808 of the National Defense Authorization Act (Pub. L. 100-180) required the Department of Defense to make certain changes to the Defense FAR Supplement Regarding Technical Data. The Department of Defense published coverage in the April 1, 1988, Federal Register. Comments from within the acquisition community as to properly defining the rights of both the Government and contractors in regard to Technical Data have necessitated issuance of another interim rule in this complex and sensitive area.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Charles W. Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 227 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 227.4, is revised to read as follows:

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

Sec.

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

227.470 Scope.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This part does not apply to rights in computer software acquired under GSA schedule contracts.

227.471 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold , licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or method of the recording.

"Detailed design data", and used in this subpart, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that in item or component produced in accordance with the technical data will be essentially

identical to the original item or component.

"Detailed manufacturing or process data", as used in this subpart, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

"Developed", as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

"Developed Exclusively with Government Funds" as used in this subpart, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

"Developed Exclusively at Private Expense", as used in this subpart, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

"Form, fit, and function data", as used in this subpart, means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose license rights" (GPLR), as used in this subpart, means, rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such person, if—

(a) Such release, disclosure, or use—

(i) Is necessary for emergency repair and overhaul; or

(ii) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(b) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(c) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

"Required for the Performance of a Government Contract or Subcontract", as used in this subpart, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a) through (d) above that are listed or described in a contract or described in a license agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

227.472 Acquisition Policy for Technical Data and Rights in Technical Data.

227.472–1 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's Interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. It needs may

exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes often at points remote from the source supply. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users. The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's Interests.* Commercial and nonprofit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The Balancing of Interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

(d) *Identification of Technical Data Rights.* The Department of Defense is required by 10 U.S.C. 2320 to recognize and protect contractor rights in technical data and to negotiate rights in technical data resulting from mixed private and Government funded development and, under 10 U.S.C. 2321, to perform a thorough review of all restrictions on its right to use or disclose technical data. For these reasons, it is necessary that all contractor and subcontractor assertions of rights be identified in the contract as early in the acquisition process as possible but no later than delivery of the technical data to the Government (see 227.473-1).

227.472-2 Establishing Minimum Government Needs.

(a) *General.* The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be considered; whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items; or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see Subpart 217.72). DoD Directive 5010.12, DoD Data Management Program, sets forth policies and procedures to be followed in acquiring technical data.

(b) *Commercial Items.* It is DoD policy to encourage the use of commercial items to the maximum practicable extent (see 210.002 (S-70)). To further this policy, it is DoD policy to limit acquisition of technical data and rights in technical data pertaining to commercial items developed at private expense; neither data nor data rights should be acquired for the competitive acquisition of such a commercial item. Therefore for such commercial items, the DoD will normally only obtain technical data and data rights as provided in 10 U.S.C. 2320(a)(2) (C) and (D) (see 227.472-3(a)(1)), such as those needed for operation, maintenance, installation, and training. Additional technical data may not be acquired unless approved by the chief of the contracting office, and greater data rights may not be acquired unless approved by the head of the contracting activity.

227.472-3 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limiting rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as enumerated in (a)(1) below. The Government will obtain limited rights as discussed in (b)(1) below. Government purpose license rights may be established in accordance with (a)(2), (b)(2), or (c) below.

(a) *Unlimited rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manual or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under any Governmental contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to limited rights or Government purposes license rights which have expired.

(2) *Exception to Unlimited Rights—Government Purpose License Rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government

purposes only for a stated period of time. After the time priod has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) The contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2), the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) above.

(2) *Exception to Limited Rights—Obtaining Greater Rights in Technical Data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in Technical Data Pertaining to Items, Components, and Processes Developed with Mixed Funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227–7013(j) with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

227.473 General procedures.

227.473–1 Procedures for establishing rights in technical data.

(a) *Notification requirements.*—(1) *Background.* Offerors and contractors are required by 252.227–7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights. Items, components, or processes do not need to be identified if no technical data is required to be delivered or if the required technical data will be delivered with unlimited rights.

(2) *Preaward Notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in (a)(5) below.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227–7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However, if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.473–2(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical data with restrictions on the Government's right of use or disclosure that is required by paragraph (k) of the clause at 252.227–7013.

(ii) During the life of the contract, this list will be updated as needed to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all technical data to be delivered with restrictions on the Government's rights of use or disclosure. Also, during contract performance, changing conditions may require bilateral modification of the list.

(iii) The purpose of the list is to facilitate the review of contractor assertions required by 10 U.S.C. 2321 and to provide a basis for Government acquisition planning. It is not a final determination of rights and does not alter the rights of the parties under 10 U.S.C. 2320 or 2321.

(4) *Postaward notification.* Because it may be impracticable to identify all items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights prior to contract award, paragraph (j) of the clause at 252.227–7013 requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the representation described in (a)(5) below.

(5) *Representations.* (i) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the representation at 252.227–7013(j).

(A) This clause authorizes the contracting officer to request additional information needed to evaluate the assertions.

(B) This representation assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227–7037.

(ii) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227–7028, Requirement for Technical Data Representation, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(B) Identification of any limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(6) *Supporting information.* The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information, either preaward or postaward, should normally not be requested unless there are reasonable grounds to question the validity of the assertion. While the contractor or subcontractor is obligated to provide sufficient information to fully justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(b) *Establishing rights in technical data.* (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227–7013(k), unless there are grounds to question the validity of the assertion. If appropriate, the procedures at 217.7201 will be followed and greater rights obtained pursuant to 227.472–3(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.473–4 and 252.227–7037.

(2) If the offeror or contractor is requesting exclusive commercial rights in technical data that would otherwise be delivered to the Government with unlimited rights, the contracting officer should agree to permit the contractor to establish exclusive commercial rights pursuant to 227.472–3(a)(2), unless the Government's intended use of the data would make protection of the contractor's rights unduly burdensome.

(i) Exclusive commercial rights may be accomplished by either deferring delivery or ordering of the technical data in accordance with 227.474–2 or by agreeing to accept the data with Government purpose license rights for a specified period of time in accordance with 227.472–3(a)(2).

(ii) The item, component, or process and the technical data will be identified in the list in the contract.

(3) If the offeror or contractor is asserting that the item, component, or process is developed with mixed funding, then the respective rights will be negotiated using the guidelines at paragraph (c) below and the results identified in the listing described at 252.227–7013(k).

(i) These negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or under urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved by the chief of the contracting office. The contracting officer will notify the contractor, stating that the contractor must notify the contracting officer if it elects to use the item, component or process. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of rights.

(ii) Data rights resulting from mixed funding need not be negotiated for small purchases or contracts awarded using sealed bidding.

(c) *Negotiation of Rights*—(1) *Negotiation Factors.* The contracting officer shall consider, as appropriate, the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(i) The acquisition strategy for the item or system (including logistics support);

(ii) Whether the item or system (or related logistics support) will be competed;

(iii) Timing of such competition;

(iv) The economic life of the technology and whether it can be commercialized;

(v) Funding contributions of the respective parties;

(vi) Development of alternative sources for industrial mobilization or other purposes;

(vii) Burden of protecting the contractor's rights in technical data; and

(viii) Other factors, such as unique contractor qualification or expertise contributing to the configuration management or development of the item, component or process.

(2) *Negotiation situations.* The following are examples of how the negotiation factors in (c)(1) above may be applied.

(i) When the Government does not anticipate an early need to use the data for competition and the contractor has requested exclusive rights in the data, the Government may negotiate to establish limited rights which, upon expiration of a time limitation, would become unlimited rights.

(ii) Where the Government requires early use of the data for competition, the contractor has requested exclusive commercial rights in the data, and protecting the contractor's rights is not unduly burdensome, the contracting officer may negotiate GPLR which would expire after a specified period of time and become unlimited rights.

(iii) Where the Government requires early use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights or to establish another suitable arrangement that would satisfy the Government's needs.

(3) *Negotiation of Time Periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(i) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(A) The technical data will not be needed for competition; and

(B) Longer periods are approved by the chief of the contracting office.

(ii) Time limitations for limited rights and GPLR may be extended; if:

(A) Other interested parties have not requested access to the technical data;

(B) The technical data need not be publicly disclosed to meet a specified Government need; and

(C) The contractor provides adequate consideration for remarking any technical data with revised legends.

(4) *Non-Standard license rights.* Unlimited rights, Government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated in technical data resulting from mixed funding unless approved by the chief of the contracting office. Direct licensing arrangements are not considered non-standard license rights unless they involve delivery of technical data with non-standard rights.

(d) *Standard non-disclosure agreements.* (i) Technical data subject to other than unlimited rights shall not be

released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data are subject to GPLR, the recipient must sign the Standard Non-disclosure Agreement shown below. This Agreement must be executed by an official authorized to bind the contractor.

(ii) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(iii) The contracting officer shall require each contractor receiving data subject to GPLR to execute the Standard Non-Disclosure Agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Non-disclosure Agreement

The undersigned (name), as the authorized representative of (company name) (hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefor:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the Standard Non-Disclosure Agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires).

Signed this ____ day of _____, 19____.

Licensee

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227-7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered, or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(1) When no data other than existing works are to be acquired in accordance with 227.477;

(2) When no data other than special works are to be acquired in accordance with 227.476;

(3) When the work will be performed by foreign sources in accordance with 227.475-5; and

(4) For architect-engineer services or construction in accordance with 227.478.

227.473-2 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.472-3(b)(2)).

227.473-3 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227-7018 and 252.227-7029 in all contracts which also contain the clause at 252.227-7013. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227-7018 shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227-7030 for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.473-4 and the clause at 252.227-7037.

(e) *Non-Conforming Markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according

to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly. Copyright notices, which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings.

227.473-4 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227-7037 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data, but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation".

(b) *Prechallenge request for information.*— (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227-7037.

227.473-5 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227-7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to 10 percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) As required by 10 U.S.C. 2320(b)(7), the clause at 252.227-7036, Certification of Technical Data Conformity, shall be included in solicitations and contracts which include the clause at 252.227-7031, Data Requirements.

227.473-6 Subcontractor rights.

(a) Prime contractors must satisfy their contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying these obligations, prime contractors must accomplish the balancing of interests described at 227.472-1 in dealing with their subcontractors by ensuring that—

(1) The clauses 252.227-7013, Rights in Technical Data and Computer Software, and 252.227-7018, Restrictive Markings in Technical Data, are included in all subcontracts that call for delivery of technical data to the Government;

(2) A subcontractor is not hampered from furnishing limited rights data directly to the Government rather than through the prime contractor or higher-tier subcontractor;

(3) The economic leverage of the prime or higher-tier subcontractor is not used to acquire rights in technical data from subcontractors; and

(4) Subcontractor rights are recognized and protected in the notification and listing process (see 227.473-1).

(b) The prime contractor may not use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

227.474 [Reserved]

227.475 Other procedures.

227.475-1 Data requirements.

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423 is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223-3.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423 and data deliverable under clauses prescribed in the FAR and DFARS.

227.475-2 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software are expensive to prepare, maintain and update. By delaying the delivery of technical data or computer software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may

become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227–7026 "Deferred Delivery of Technical Data and Computer Software", shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all item (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data "or" computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery or the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227–7027, "Deferred Ordering of Technical Data or Computer Software", should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the data the contractor accepts the last item under the subcontract. When the data and computer software are ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

227.475–3 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246–7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with section 246.703.

227.475–4 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.475–5 Overseas contracts with foreign sources.

The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). However, the clause at 252.227–7013, "Rights in Technical Data and Computer Software", shall be used whenever the rights to be obtained are those which would be obtained if contracting with United States firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition: *Provided,* it is consistent with sections 227.472 and 227.481.

227.475–6 [Reserved]

227.475–7 [Reserved]

227.475–8 Publication for sale.

Alternate I of the clause at 252.227–7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.476 Special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.477 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-Shelf Acquisition of Books and Similar Items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.478 Architect-engineer and construction contracts.

227.478-1 General.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.478-2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in (a)(1)(ii) below, use the clause at 252.227-7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(2) *Shop Drawings for Construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227-7033, Rights in Shop Drawings.

227.478-3 Contracts for construction supplies and research and development work.

The provisions and clauses required by this section shall not be used when the acquisition is limited to either (a) construction supplies or materials, (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both.

227.478-4 [Reserved]

227.478-5 Approval of restricted designs.

The clause at 252.227-7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.479 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97-219, "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65-01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of non-disclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgment and disclaimer statement.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

227.480 Copyrights.

(a) In general, the copyright law gives a copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in (a) above may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227-7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227-7013 and 252.227-7020 provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

§ 227.481 Acquisition of rights in computer software.

§ 227.481-1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance

in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government; (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in Section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see Section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in Section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.481–2 Procedures.

(a) *Deviations.* All requests for deviations from this 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.404.

(b) *General.* (1) Except as provided under 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software development at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such

markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notices, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.482 [Reserved]

3. Sections 252.227–7013, 252.227–7018, 252.227–7019, 252.227–7021, and 252.227–7028 through 252.227–7031 are revised; section 252.227–7035 is removed and the section marked "Reserved"; section 252.227–7036 is revised; and section 252.227–7038 is removed and the section marked "Reserved". Sections 252.227–7014 through 252.227–7017, 252.227–7020, 252.227–7022 through 252.227–7027, 252.227–7032 through 252.227–7034 and 252.227–7037 remain unchanged and are republished for the convenience of the reader, to read as follows:

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.473–1(e) and 227.481–2(b)(2), insert the following clause:

Rights in Technical Data and Computer Software (OCT 1988)

(a) *Definitions.*

(1) "Commercial computer software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) "Computer" as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) "Computer data base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) "Computer program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) "Computer software", as used in this clause, means computer programs and computer data bases.

(6) "Computer software documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) "Data", as used in this clause, means recorded information, regardless of form or method of the recording.

(8) "Detailed design data", as used in this clause, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) "Detailed manufacturing or process data", as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) "Developed", as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United State Code.

(11) "Developed Exclusively with Government Funds", as used in this clause, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) "Developed Exclusively at Private Expense", as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government

contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205-18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. They are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) "Form, fit, and function data", as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) "Government purpose license rights" (GPLR), as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) "Limited rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer sofware documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) "Required for the Performance of a Government Contract or Subcontract", as used in this clause, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

(17) "Restricted rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17) (i)–(iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) "Technical data", as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) "Unlimited rights", as used in this clause, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) "Unpublished", as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) *Rights in Technical Data*—(1) *Unlimited Rights.* Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has executed the Standard Non-Disclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

Government Purpose License Rights Legend

Contract No. _____
Contractor: _____

_____

_____

Government purpose license rights shall be effective until (insert date certain); thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) of the clause at 252.227-7013 of the contract listed above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Limited Rights.* Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (a)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

Limited Rights Legend

Contract No. ———————————.
Contractor:———————————. ———————————

Limited rights shall be effective until (insert date certain), thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) of the clause at 252.227-7013 of the contract listed above.

For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate.

For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraph (a)(15) and (a)(14) above, insert the following statement:

"In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227-7013, the Government shall have the rights described in the license or agreement made a part of Contract No. ———."

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ——— with (Name of Contractor) and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

———————————
(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyrights.* (1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227-7031 (date).

(f) *Removal of Unjustified and Nonconforming Markings*—(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Nonconforming Technical Data Markings.* Correction of nonconforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) *Unjustified and Nonconforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.* (1) The Contractor must satisfy its contractual obligation to the Government while ensuring that the rights afforded its subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying its obligation, the Contractor must accomplish the balancing of interests described at DFARS 252.227-472-1 in dealing with its subcontractors.

(2) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(3) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(4) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(5) The Contractor shall ensure that subcontractor rights are recognized and protected in the notification and listing process at paragraphs (j) and (k) below.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(j) *Notice of Limitations on Government Rights.* (1) The Offeror/Contractor shall notify the Contracting Officer of its or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds which the Offeror or Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) Such notification is not required with respect to items, components, processes or computer software if no technical data is required to be delivered or if the required technical data is delivered with unlimited rights.

(3) Such notification shall be accompanied by the following representation:

Representation of Private Development

The Offeror/Contractor/Subcontractor represents that, to the best of its knowledge and belief, the information contained in this notification is current, accurate, and complete.

Date _____

Name and Title _____

Official _____

This representation shall be dated and the signing official (identified by name and title) shall be duly authorized to bind the Contractor.

(4) Upon request by the Contracting Officer, the Offeror or Contractor shall provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's or subcontractor's assertions made in (j)(1) above.

(k) *Identification of restrictions on Government rights.* Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are identified in a list made part of this contract. This list is intended to facilitate review and acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227-7037. As a minimum, this list must—

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(l) *Postaward Negotiation—Disputes.* In the case of an item, component, or process that is developed in part with Government funds and in part at private expense, if, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of clause)

Alternate I (OCT 1988)

As prescribed at 227.475-8, add the following paragraph to the basic clause:

(m) *Publication for sale.* If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published

by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate II (OCT 1988)

As prescribed at 227.479(d), substitute the following paragraphs (b) and (c) for the existing paragraphs (b) and (c) in the basic clause.

(b) *Rights in Technical Data—(1) Unlimited Rights.* The Government is entitled to and will receive unlimited rights in:

(i) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(ii) Manuals or instructional materials (other than detailed manufacturing or process data or commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data; and

(iv) Technical data which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(1) above. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. _____.
Contractor: _____.

_____ _____ _____ _____
_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS clause at 252.227-7013. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in any technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to unlimited or limited rights pursuant to subparagraph (b)(1) or (b)(2) above. The Government shall not be liable for unauthorized use or disclosure of the data by third parties. Government Purpose License Rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. _____.
Contractor: _____.

For a period of two (2) years after delivery and acceptance of the last deliverable item under the above contract, this technical data shall be subject to the restrictions contained in the definition of "Limited Rights" in DFARS clause at 252.227-7013. After the two-year period, the data shall be subject to the restrictions contained in the definition of "Government Purpose License Rights" in DFARS clause at 252.227-7013. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(c) *Rights in Computer Software—(1) Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to this unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the

Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have restricted rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) Any other computer software required to be perpared or delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein. Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on futher use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

252.227-7014 [Reserved]

252.227-7015 [Reserved]

252.227-7016 [Reserved]

252.227-7017 [Reserved]

252.227-7018 Restrictive Markings on Technical Data.

As prescribed at 227.473-3(a), insert the following clause:

Restrictive Markings on Technical Data (OCT 1988)

(a) The Contractor or any subcontractor that delivers technical data with other than unlimited rights shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical data and Computer Software" clause of this contract. The Contractor or subcontractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as a minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized:

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within the Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.481-2(b)(2), insert the following provision:

Identification of Restricted Rights Computer Software (APR 1988)

The Officer is required to identify in his proposal, to the extent feasible, any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. Any restrictions on the Government's use or disclosure of computer software developed at private expense and to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. If no such computer software is identified, all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.476(a), insert the following clause:

Rights in Data—Special Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b), and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claims to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

• (*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matters contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any

patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—Existing works.

As prescribed at 227.477(a), insert the following clause:

Rights in Data—Existing Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (Unlimited).

As prescribed at 227.478-2(a)(1)(i), insert the following clause:

Government Rights (Unlimited) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specification, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of Government.

As prescribed at 227.478-2(a)(1)(ii), insert the following clause:

Drawings and Other Data To Become Property of Government (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.478-5, insert the following clause:

Notice and Approval of Restricted Designs (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252-227-7025 [Reserved]

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.475-2(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.475-2(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of the contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data representation.

As prescribed at 227.473-1(a)(5)(ii), insert the following provision:

Requirement for Technical Data Representation (OCT 1988)

The Offeror shall submit with its offer a representation as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify:

(a) One existing contract of subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(b) Any limitation on the Government's right to use or disclose the data, including, when applicable, identification of the earliest date the limitation expires.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.473-3(a), insert the following clause:

Identification of Technical Data (APR 1988)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.473-5(b), insert the following clause:

Technical Data—Withholding of Payment (OCT 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.475-1(a), insert the following clause:

Data Requirements (Oct 1988)

The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.475-5, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (Jun 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.478-2(a)(2), insert the following clause:

Rights in Shop Drawings (Apr 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—subcontracts.

As prescribed at 227.304-4, insert the following clause:

Patents—Subcontracts (Apr 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 [Reserved]

252.227-7036 Certification of technical data conformity.

As prescribed at 227.473-5(c), insert the following clause:

Certification of Technical Data Conformity (May 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.473-4(a) insert the following clause:

Validation of Restrictive Markings on Technical Data (Apr 1988)

(a) *Definitions.* The terms used in this clause are defined in the clause at DFARS 252.227-7013 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the record of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that

continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2) (ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release of disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final deposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final

disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

252.227-7038 [Reserved]

[FR Doc. 88-24416 Filed 10-27-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 71264-8028]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Loligo* squid as required by the regulations governing the squid fisheries. This increase is assigned to the domestic annual harvest (DAR) and makes an additional 3,000 metric tons (mt) available for domestic annual processing (DAP). Regulations governing the squid fisheries require publication of any adjustments, accompanied by reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATE: This notice is effective on filing. Comments are invited until November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Under 50 CFR 655.22, final initial specifications for squid were published on March 4, 1988, (53 FR 6991) for the fishing year January 1 through December 31, 1988. The regulation at § 655.21 (b)(1)(v) provide that initial annual specifications may be adjusted by the Regional Director, NMFS Northeast Region, after consultation with the Mid-Atlantic Fishery Management Council (Council). The Regional Director may adjust the IOY upward to the Allowable Biological Catch (ABC) at any time during the fishing year if new information indicates that U.S. fishermen will exceed the initial DAH.

Domestic Landings of *Loligo* for 1988 are expected to exceed the initial DAH specified for the fishing year. On August 31, 1988 the catch reached 13,285 mt. The catch for the September through December period for the previous 3 years averaged 2,100 mt. Based on this information, the Regional Director projects that the 14,000 mt DAH will be exceeded before the fishing year ends on December 31, 1988. In addition, the 1988 catch rate is at least one and one half times the averaged previous 3-year rate and, therefore, it is estimated that domestic harvesters will utilize approximately 3,000 mt during the remainder of 1988.

The Council has been apprised of the catch projections and agrees with the Regional Director's decision to increase the IOY and assign the increase to DAH. The assignment provides the additional tonnage to DAP necessary for domestic fishing operations to continue.

In accordance with § 655.22 (f), notice is hereby given that the IOY for *Loligo* squid of 14,000 mt is increased by 3,000 mt to a total of 17,000 mt. DAH and DAP for *Loligo* squid are each increased from 14,000 mt to 17,000 mt.

Classification

This action is authorized by 50 CFR Part 655 and complies with E.O. 12291.

In view of the need to avoid disruption of the domestic fishery, NOAA has determined that this adjustment will be effective upon filing with the Federal Register because delaying the effective date of this notice is impractical unnecessary and contrary to the public interests.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-24904 Filed 10-25-88; 9:40 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Amdt. No. 4; Doc. No. 5880S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years in all states, the intended effect of which is to: (1) Revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a new Frost/Freeze Option to provide coverage against frost and freeze, and (2) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 28, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The new sunset review date established for these regulations is August 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to revise and reissue the Quality Potato Option (7 CFR 422.9) with the following changes:

1. The Option has been made continuous. The insured no longer has to submit a new application for each crop year. All language regarding annual submission of the form has been removed.

2. Language has been added to indicate that if both this Option and the frost/freeze Option are in effect that only the Option which results in the least production to count will be considered. This language is necessary to prevent the possibility of a separate indemnity for each Option.

3. The definition of "acceptable inspection" and language designating who may make grade determinations has been added. These additions are in response to an Office of Inspector General—Audit (OIG) comment which requested that any grade determination should be made by someone with proper training.

4. Additional minor editorial changes have been made to improve clarity. These changes do not effect the meaning or intent of the provisions.

FCIC also proposes to add two new Options to the Potato Crop Insurance Regulations for the 1989 crop year, as follows:

1. The proposed Frost/Freeze Option, (7 CFR 422.10), is a modification of the frost/freeze chart formerly used in conjunction with the 1986 loss adjustment procedures. This Option may be added to a grower's basic policy at an additional premium.

2. The proposed Processing Potato Quality Option (7 CFR 422.11), may also be added to a grower's basic policy for an additional premium. This Option provides quality adjustment specifically for processing potatoes. Its availability will initially be limited to two counties. The current Quality Potato Option will provide quality adjustment for both fresh and processing potatoes in other selected counties. After insuring experience is analyzed, use of this Processing Potato Quality Option may be expanded.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments, data, and opinions on the proposed rule should be sent to Peter F. Cole, Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written comments received pursuant to this notice will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Potato

Crop Insurance Regulations (7 CFR Part 422), proposed to be effective for the 1989 and succeeding crop years, in the following instances:

PART 422—POTATO CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 422.9 is revised to read as follows:

§ 422.9 Quality potato option.

(a) Notwithstanding the provisions of § 422.7(d), subsection 9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Quality Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Quality Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____

SSN TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Quality Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option except for any acreage:

a. Specifically excluded by the Actuarial Table;

b. Grown for seed if you elect to exclude the acreage from coverage; or

c. Insured under the Processing Potato Quality Option.

4. Production to count determined under subsection 9.e. of the basic policy will be further modified as follows:

a. Production to count, unharvested appraised production, production stored after an acceptable inspection, and marketed production containing potatoes that grade less than U.S. No. 2* will be determined by dividing the actual percentage of potatoes grading U.S. No. 2* or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of weight (cwt.) of such potatoes; or

b. Production to count of potatoes stored without an acceptable inspection will be 100 percent of the gross weight (cwt.) of such potatoes.

5. If you have a Frost/Freeze Potato Option and this Option in effect on the same production, the production to count will be based on the Option which results in the least production to count.

6. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available to sample or grade the potatoes, the sampling or grading for the purposes of this Option will be performed by us.

7. Your premium rate for this Option will be contained in the Actuarial Table.

8. "Acceptable Inspection" means that prior to storage the potatoes are evaluated by us and grade determinations are made in accordance with section 6 of this Option.

9. "Percentage factor" means the historical average percentage of potatoes grading U.S. No. 2* or better, by type, determined from your records as established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

* The actuarial table may provide for U.S. No. 1 in place of U.S. No. 2.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so.

Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

3. New §§ 422.10 and 422.11 are added to read as follows:

§ 422.10 Frost/freeze option.

(a) Notwithstanding the provisions of § 422.7(d), subsection 9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Frost/Freeze Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Frost/Freeze Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Frost/Freeze Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option.

4. If the actuarial table provides a date after which loss of production due to frost or freeze damage is not insurable, this Option will provide coverage only until such date.

5. Production to count for a unit damaged by frost or freeze will be determined by applying the percentage obtained from the following table to the production to count determined under the basic policy:

Percent damage due to frost or freeze:	*Percent* [1]
0 to 5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

[1] Percent of production to count.

The adjustment production to count will then be counted against your production guarantee to determine the amount of loss. We must inspect the production prior to harvest to determine the amount of frost or freeze damage.

If the frost or freeze damage is determined to be 20 percent or more at the time of harvest, you may with our written permission, destroy the crop, (it will be considered a total loss) and you will be indemnified accordingly. You may also elect to market or store the crop and apply the total harveted production minus the frost or freeze damaged potatoes against guarantee. This decision must be made by you on the day the potatoes are determined to be 20 percent or more frost or freeze damaged.

6. If you have the Potato Quality Option or the processing Potato Quality Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

7. Your premium rate for this Option will be established by the actuarial table.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.)*, or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility or any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necesary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

§ 422.11 Processing potato quality option

(a) Nowwithstanding the provisions of subsection § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Processed Potato Quality Option (Option), elect to insure all insurable acreage of potatoes constracted with a processor under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Processing Potato Quality Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

1. You must have a Federal Crop Insurance Potato Policy (basic policy— in force. This Processing Potato Quality Option (Option) provides guaranteed production on a hundredwright (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial corp year in which you wish to insure your potatoes under this Option.

3. A written contract must be executed with a processor for the potato types insured under this Option and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this Option, all insurable acreage of the types of potatoes under contract with a processor must be insured under this Option.

4. This Option does not apply to potatoes damaged by frost or freeze.

5. Production to count, determined in accordance with subsection 9.e. of the policy, will be further modified as follows:

a. Production to count of unharvested appraised potatoes, potatoes stored after an acceptable inspection, and potatoes marketed (unless the potatoes were marketed to a processor for human consumption) which grade less than U.S. No. 2*:

(1) For factors other than those listed in subsection (2) below, will be determined by dividing the percentage of potatoes grading U.S. No. 2 or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of cwt. of such potatoes, or:

(2) Due to internal defects, because of a specific gravity of less than 1.070, or have a fry color of No. 3 or darker due to either sugar exceeding 10% or sugar ends exceeding 19%, production will be:

(i) Zero for unharvested appraised potatoes;

(ii) Twenty five percent (25%) of the gross weight for potatoes stored after an acceptable inspection; or

(iii) Determined by dividing the market value per cwt. of the damaged production by the highest price election available for the insured unit, and multiplying the result, not to exceed 1.000, by the number of cwt. of such production for marketed potatoes, which are not accepted by a processor of potatoes, for human consumption.

b. Production to count for potatoes stored without an acceptable inspection or accepted by a processor of potatoes for human consumption will be 100* of the gross weight (cwt.) of such potatoes.

6. All grade determinations for the purposes of this Option will be made using the United States Standards for Grades of Potatoes for Processing.

7. If you have the Frost/Freeze Potato Option and this Option in effect, the production to count will be based on the Potato which results in the least production to count.

8. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available, sampling or grading for the purposes of this Option will be performed by us.

9. Your premium rate for this Option will be established by the actuarial table.

10. "Acceptable Inspection" means that prior to storage the potatoes are evaluated by us and grades determined in accordance with section 8 of this Option.

11. "Precentage Factor" means the historical average percentage of potatoes grading U.S. No. 2* or better, by type, determined from your records or established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

*The actuarial table may provide for U.S. #1 grade in place of U.S. No. 2.

Insured's Signature _____
DATE
Corporation Representative's _____
Signature and
Code Number _____
DATE _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance, failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjuster, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

Done in Washington, DC, on October 24, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-25001 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is publishing a proposed rule adopting a methodology for computing adverse effect wage rates (AEWRs) for the temporary alien agricultural labor certification (H-2A) program. AEWRs are the minimum wage rates which must be offered and paid to U.S. and alien workers by employees seeking certification of temporary or seasonal agricultural labor or services of nonimmigrant alien workers (H-2A visaholders) in the United States. Because of the uncertainty of the outcome of ongoing litigation involving the existing methodology which was initially adopted on June 1, 1987, DOL is proposing to adopt that same methodology based upon an expanded record.

DATE: Interested parties are invited to submit written comments on this document through November 28, 1988.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, Room N4456, 200 Constitution Avenue NW., Washington, DC 20210; Attention: Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: 202-535-0163 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction.

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). The Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, provides that the Attorney General may not approve such a petition from an employer for employment of nonimmigrant alien workers (H-2A visaholders or workers) for temporary or seasonal services or labor in agriculture unless the petitioner has applied to the Secretary of Labor (Secretary) for a labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The amendments to the INA made by IRCA codified DOL's role in the temporary alien agricultural labor certification process. Prior to June 1, 1987, many of DOL's responsibilities specified in IRCA were carried out under the requirement in the INA at 8 U.S.C. 1184(c) that the Attorney General consult with appropriate agencies of the Government concerning the importation of nonimmigrant workers, and under INS regulations governing the reliance placed by INS on the advice of DOL relative to U.S. worker availability and adverse effect. See 8 CFR 214.2(h)(3)(i)

(1986); 20 CFR Part 655, Subpart C (1986).

The H–2A-related amendments to the INA made by IRCA apply to petitions and applications filed under INA sections 214(c) and 216 on or after the effective date of June 1, 1987. IRCA section 301(d), 8 U.S.C. 1186 note; see U.S.C. 1184(c) and 1186. Section 301(e) of IRCA requires that "[n]otwithstanding any other provision of law, final regulations to implement * * * [sections 101(a)(15)(ii)(a) and 216 of the Immigration and Nationality Act] shall first be issued, on an interim or other basis, not later than the effective date." 8 U.S.C. 1186 note.

On May 5, 1987, DOL published in the **Federal Register** (52 FR 16770) a proposed rule to implement DOL's responsibilities under the H–2A temporary alien agricultural labor certification program, as set out at sections 101(a)(15)(H)(ii)(a), 214(c), and 216 of the INA, as amended by IRCA. 8 U.S.C. 1101(a)(15)(ii)(a), 1184(c), and 1186). Under that program, job opportunities are certified for H–2A workers to perform agricultural labor or services of a temporary or seasonal nature in the United States. Written comments on the proposed rule were invited through May 19, 1987.

On June 1, 1987, DOL published an interim final rule in the **Federal Register**, effective on that date. 52 FR 20496. The rulemaking document discussed many of the comments received in response to the proposed rule, changing some language not relevant to this document. The comment period also was reopened through July 31, 1987. The amendments in DOL's June 1, 1987, interm final rule contained changes to the labor certification process as mandated by IRCA and revised procedures as deemed necessary by DOL to carry out its statutory responsibilities. In December 1987, the United States of Appeals for the DC Circuit remanded the interim final rule to DOL for a further explanation of the June 1, 1987, methodology. In April 1988, an explanation of the June 1, 1987, rule was submitted to the U.S. District Court. That court recently rules that the new explanation was unaccepted because it was based, in part, on information not in the rule-making record on June 1. While the DOL disagrees with the ruling and continues to litigate that issue, DOL herein proposes to adopt the same methodology adopted on June 1, 1987, but utilizing an expanded rulemaking record. This procedure was suggested by the court and agreed to by the plaintiffs at the September 28, 1988, oral argument. Comments on the interim final rule and the proposed rule continue to be considered. Based on those comments, as well as on comments submitted in response to this rulemaking, a final rule will be promulgated at a later date after consideration of all comments.

II. The June 1, 1987, Methodology

IRCA is expected to expand significantly the lawful importation program. DOL, therefore, decided to establish H–24 program adverse effect wage rates (AEWRs) not merely for the 14 "traditional user States", but instead to set them for every State (except Alaska). In order to ensure that the wages of similarly employed U.S. workers are not adversely affected, DOL continued in the June 1, 1987, interim final H–2A regulation its past policy and practice of requiring covered agricultural employers to offer and pay their U.S. and H–2A workers no less than the applicable AEWR, as determined by the Director, U.S. Employment Service (USES). Further, the interim final H–2A regulations, as had the H–2A regulations, provided that employers applying for temporary alien agricultural labor certifications must agree to comply with all employment-related laws. If the employment is covered by a wage standard applicable under any federal or State minimum wage law, the employer must comply with that law. See *e.g.*, 29 U.S.C. 206(a); and 20 CFR 653.501(d)(4) and (e)(1) (1986). If the prevailing wage for the occupation in the labor market of intended employment is higher, the employer must offer and pay that wage. Thus, a worker in employment under the H–2A program must be paid at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the federal or State statutory minimum wage. See *Limoneira Co.* v. *Wirtz*, 327 F.2d 499 (9th Cir. 1964), *aff'g*, 225 F.Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards, Inc.* v. *Brennan*, 508 F.2d 1154, 1156 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F.2d 1154, 1158 (1st Cir. 1977). These decisions acknowledge DOL's discretion in the area of AEWRs and form a basis for construing DOL's H–2A regulations.

Although continuing its basic past policy of requiring the payment of the AEWR, prevailing wage, or statutory minimum wage, whichever is highest, DOL, in the June 1, 1987, interim final rule, revised the procedures for calculating and establishing AEWRs for H–2A work. DOL changed the method of calculating AEWRS, by basing AEWRs on the level of actual average hourly agricultural wages for each State, as surveyed by the U.S. Department of Agriculture (USDA). This new methodology sets AEWRs in each year for the H–2A program at a level equal to the previous year's annual regional average hourly wage rates for field and livestock workers (combined), as computed by USDA quarterly wage surveys. (This is the same data series by which AEWRs under the previous H–2 agricultural worker program were indexed. USDA publishes the data for the 48 contiguous States and Hawaii by nineteen agricultural regions, which consist of one or more States.)

The new methodology ties AEWRs directly to the average wage, as opposed to the old methodology which resulted in AEWRs substantially higher than agricultural earnings in many States, and lower for some States. The new methodology is based directly on a current average agricultural wage that is not apparently depressed by the presence of foreign workers, rather than being based on a 1950 agricultural wage that had been adjusted upward by various methods over the years, as discussed below in Section IV.

III. AFL–CIO v. Brock

Upon publication of the interim final rule, the AFL–CIO sued DOL to, among other things, invalidate the interim final 20 CFR 655.107(a), which established the methodology for computing AEWRs.

On December 22, 1987, the United States Court of Appeals for the District of Columbia Circuit reversed a lower court decision that had invalidated the interim final 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912 (DC Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court decision that stayed the implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(a). 835 F.2d at 913 n. 2. However, the DC Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *" 835 F.2d at 913 n. 2, 919, and 920. The DC Circuit, therefore, remanded the rulemaking for DOL to provide a more reasoned explanation for why it chose in the June 1, 1987, methodology to discontinue what it viewed as the prior practice of providing for an enhancement to correct for the past employment of legal and undocumented aliens. Upon remand, the District Court ordered the "reasoned explanation" to be issued on or before

April 30, 1988, unless otherwise ordered. *AFL–CIO* v. *Brock*, Civil Action No. 87–1683 (Order, D.D.C. March 25, 1988). DOL submitted the expanded explanation to the District Court in April 1988.

DOL engaged in an extensive analysis of the opinion, a review of the pre- and post-June 1, 1987, rulemaking record and other data, and consultations with other affected agencies of the Federal Government. As a result of those consultations, and on the basis of its own analysis, DOL herein proposes to adopt prospectively the AEWR methodolgy set forth below.

IV. Historical Protections Against Adverse Effect on Wages

A. History of AEWRs

1. Background

In order to adequately assess the court's concern that the June 1, 1987, AEWR methodology represents a substantial departure from past practice, it is necessary to review DOL's longstanding practice in setting AEWRs.

From the beginning of the Federal Government's involvement in the lawful importation of foreign agricultural workers, dating at least as far back as 1942, the Government has sought to protect similarly employed U.S. workers from the adverse effect such employment would have on their wages. At first, these programs were established under both international agreements and federal statutes, and more recently by federal statutes alone.

For a number of decades, DOL has computed and published AEWRs for the temporary employment of nonimmigrant alien workers for agricultural employment under various admission programs. *See* H.N. DELLON, "Foreign Agricultural Workers and the Prevention of Adverse Effect", 17 *Labor Law Journal* 739 (1966). Mr. Dellon's article notes that, as far back as 1953, employers seeking to import foreign nationals to work in various crop activities (in that case, under the Bracero Program) were required to pay not less than a wage established by DOL. Eventually, AEWRs began to be set periodically on a Statewide basis. See *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961).

As time passed, establishment of AEWRs became more formalized, and AEWRs were computed and set for the H–2 agricultural worker program as well, after public notice and comment. See, *e.g.*, 29 FR 19101, 19102 (December 30, 1964); 32 FR 4569, 4571 (March 28, 1967); and 35 FR 12394, 12395 (August 4, 1970).

2. World War II Programs

The 1942 Agreement With Mexico Respecting the Temporary Migration of Mexican Workers, stemming from the wartime shortage of domestic farm labor, facilitated the importation of Mexican workers in the beginnings of the "Bracero program". 56 Stat. 1759, EAS 278 (July 23 and August 4, 1942). The 1942 Agreement required that the Mexican workers be paid the same wage rates as those paid to U.S. farmworkers, but in no event could hourly rate workers be paid less than $.30 per hour. See Wayne D. Rasmussen, *A History of the Emergency Farm Labor Supply Program, 1943–47*, U.S. Department of Agriculture, Bureau of Agricultural Economics, Monograph No. 13 (September 1951) (Rasmussen) at 203. The $.30 per hour wage was equivalent to the federal Fair Labor Standards Act (FLSA) minimum wage then applicable to nonagricultural employment. In 1943, the $.30 per hour minimum in the 1942 Agreement was extended to piece-rate workers. 57 Stat. 1152, EAS 351 (April 26, 1943). In 1946, the wage was raised to $.37 per hour or $33.60 per week (the latter for bi-weekly-paid workers). See Rasmussen at 211.

Congress specifically authorized the Bracero program, and programs to import farmworkers from other Western Hemisphere areas, by statute by enacting Pub. L. 45 in 1943. Act of April 29, 1943, c. 82, 57 Stat. 70. Pub. L. 45 and the agreements with the foreign governments provided the basic structure for the operation of the Mexican and other foreign farm labor programs through 1947.

Other international agreements, although less formal, were entered into with the Bahamas, Barbados, Jamaica, Canada, and Newfoundland (then separate from Canada):

(a) By a March 16, 1943, agreement establishing the Bahamian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 225. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 240.

(b) By an April 2, 1943, agreement establishing the Jamaican program, workers were guaranteed the higher of the local prevailing wage of $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 250–51. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 253.

(c) By a May 24, 1944, agreement establishing the Barbadian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 273–274. This was raised to $15.00 weekly or $30.00 bi weekly in 1946. See Rasmussen at 275.

(d) Thirteen cents and $.15 per barrel minimum piece rates were set for Canadian farmworkers in the Maine potato harvest. Rasmussen at 276.

(e) By a March 23, and 24, 1944, agreement establishing the Newfoundland program, dairy workers were guaranteed the higher of the local prevailing wage or $65.00 per month. See Rasmussen at 282.

3. Post-war Program

The World War II programs ended at the close of 1947. However, temporary foreign agricultural workers continued to enter the United States, particularly from Mexico, pursuant to section 3 of the Immigration Act of 1917, and post-war extensions and revisions of the 1942 international agreement. 61 Stat. 3738, TIAS 1710 (March 25 and April 2, 1947); 62 Stat. 3887, TIAS 1968 (February 21, 1948); and 2 U.S.T. 1048, TIAS 2260 (August 1, 1949). The agreement was information extended in 1950. The work contract under the post-1947 agreements differed in the area of wages, however. There was no guaranteed hourly wage (in 1945 this was $.37 per hour) and no guaranteed minimum piece-rate earnings.

4. Bracero Program

Concern was raised, however, that importation of these workers had caused wages in their areas of employment to lag. President's Commission on Migratory Labor, *Migratory Labor in American Agriculture* (1951) at 58–59. After negotiations with Mexico, a new agreement was negotiated, authorized by Pub. L. 78, c. 223, 65 Stat. 119 (July 12, 1951), 7 U.S.C. 1461–1468 (1951) (now deleted). Mexican workers could not be admitted unless the Secretary of Labor determined, among other things, that "the employment of the workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed. * * * *" A new international agreement was signed, effective August 11, 1951. Migrant Labor Agreement of 1951, 2 U.S.T. 1940, TIAS 2331, 162 UNTS 103 (August 11, 1951). Workers were to be paid the prevailing wage rates. As amended and updated in the 1950's and early 1960's, the 1951 statute and international agreement authorized the Bracero program in that period.

The 1961 extension of the 1951 agreement added the requirement that the wages stated in the contract shall be no less than an adverse effect wage rate

determined by the Secretary of Labor. 10 U.S.T. 1630, TIAS 4815; 12 U.S.T. 3130, TIAS 4913. In 1962, these ranged from $.60 per hour in Arkansas to $1.00 per hour in 17 other States. The ceiling was set to correspond (rounded to the nearest $.05) to the USDA's national survey of average agricultural earnings, which was found to be $.99 in 1961. By comparison, the FLSA minimum (not yet extended to agriculture) was $1.15 per hour. States with average earnings above the national average were held to the $1.00 rate; and one State at the national average was rounded down to $.95. In six other States with average earnings below the national average, the AEWR was set generally by taking the State average hourly farm wage rate, as reported in the 1959 Census of Agriculture and adjusting it to 1961 in accordance with the trend in farm wage rates for that State as measured by USDA's series of average hourly farm wage rates with the obtained figures rounded down to the next $.05. These AEWRs applied only to the Bracero program. The 1962 AEWRs for 24 Bracero-user States continued to be used in 1963 and in 1964, the final year of the Bracero program.

5. H–2 Program

In 1952, Congress passed the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, which, as amended and updated, controls the importation of other foreign agricultural workers (and, since 1962, Mexican workers as well). This was known as the H–2 program (now replaced under IRCA by the H–2A Program). The use of legally admitted non-Mexican workers was, until the late 1970's, mainly in Atlantic seaboard States (with the exception of sheepherders in the western States).

Only prevailing wages were required to be offered under the H–2 program until 1963. In that year, near the close of the Bracero program, the H–2 program established a series of AEWRs for 11 East Coast H–2 user States. A maximum AEWR ($1.00 per hour) was retained, but the bases for the rates were derived from the 1959 Census of Agriculture average hourly earnings for each State adjusted by the 1959–61 trend in wages as determined by USDA. The 1963 AEWRs continued to be used in 1964.

A new formula was applied to set AEWRs for 28 States using foreign agricultural workers in 1965. See 20 CFR 602.10 (1965), 29 FR 19101 (December 30, 1964). The formula used the 1950 Census of Agricultural average hourly farm wage (AHFW) rate for each State, adjusted by the 1950–63 trend in gross average hourly earnings of production workers in manufacturing or the 1950 Census of Agriculture national AHFW rate similarly adjusted, whichever was higher, rounded down to the nearest $.05. A minimum AEWR of $1.15 per hour and a maximum of $1.40 per hour was applied. The AEWR was set above the computed level in five New England States (all except Connecticut), to $1.25 for Maine and to $1.30 for the other four States. The maximum caused AEWRs in five States (California, Kansas, Minnesota, South Dakota, and Utah) to be lowered below the computed level, to $1.40.

In 1967, AEWRs were increased by $.20 per hour, based on 1963–66 changes in the USDA survey of farm wages and other factors.

Beginning in 1968, these AEWRs were computed by adjusting the previous year's Statewide AEWR by the same percentage as the percentage change in the Statewide annual average wage rates for field and livestock workers, as surveyed by the USDA, and were set through rulemaking amending the H–2 agricultural worker regulations. See 41 FR 25018 (June 22, 1976); and 43 FR 10306, 10310 (March 10, 1978); see also 20 CFR 602.10b(a)(1) (1977).

The regulations for the H–2 agricultural worker program were consolidated and substantially revised in 1978, after an extended comment period and six public hearings (May and June 1977). 20 CFR Part 655, Subpart C, 43 FR 10306 (March 10, 1978). As part of that rulemaking, DOL's methodology for computing AEWRs, as well as alternative methodologies for computing AEWRs, were discussed and considered. 43 FR at 10310–10311. The methodology was set out in the regulations for the H–2 agricultural worker program. 20 CFR 655. 207, 43 FR at 10317.

DOL continued to study the AEWR after the 1977–78 rulemaking. An Advance Notice of Proposed Rulemaking was published in 1979, and six additional public hearings were held. 44 FR 59890 (October 16, 1979). Various alternative methodologies were presented for public comment; the public responded to the alternatives and additional methodologies were suggested as part of the rulemaking record. A proposed rule (with a four-month comment period) was published in 1980, and a final rule was published in 1981. 46 FR 4568 (January 16, 1981); 45 FR 29854 (May 6, 1980); and 45 FR 15914 (March 11, 1980). The final rule would have established a single, nationwide, AEWR at the level of the previous year's national annual average hourly wage for

piece-rate-paid hired agricultural workers, as computed by USDA surveys. However, as part of a general review of agency regulations, and to consider fully the impact of the new methodology, it was withdrawn prior to its effective date. 46 FR 32437 (June 23, 1981); and 46 FR 19119 (March 27, 1981).

In 1981, USDA substantially reduced its number of surveys and ceased compiling annual average field and livestock worker wage rates, as well as the survey data which would have been used in the rule withdrawn in 1981. Various interim methodologies were utilized until USDA reestablished its surveys and DOL reestablished the 1968–1981 methodology. The interim methodologies did not change the basic way in which AEWRs were computed, by adjusting the previous year's rate by the annual change in farm worker wages as reflected in a wage survey. These were accompanied by further rulemaking, and opportunity for and consideration of public comments. See, *e.g.*, 51 FR 20516, (June 5, 1986), 51 FR 15915 (April 29, 1986); 51 FR 12872 (April 16, 1986); 50 FR 47636 (November 19, 1985); 49 FR 31784 (August 8, 1984); 49 FR 30208 (July 27, 1984); 48 FR 40168 (September 2, 1983); 48 FR 33684 (July 22, 1983); 48 FR 232 (January 4, 1983); 47 FR 52198 (November 19, 1982); and 47 FR 37980 (August 27, 1982).

B. *Summary*

This review of the history of the setting of AEWRs over the past 40 years leads to two conclusions; first, that the old methodology was *not* designed to enhance Statewide average hourly earnings from the USDA survey; and, second, that the fact that the AEWR averaged 20% above the average hourly earnings from the USDA survey in the fourteen "traditional user States" is an unintended result of the application of the various methodologies used in the 1960's to create the AEWR base; it cannot in any way be viewed as a measurement of the quantum of adverse effect.

In all its long history of dealing with AEWRs, DOL has employed a number of methodologies for setting AEWRs during the different periods of time. None of these methodologies ever has purported to add an enhancement to the USDA rates. To the contrary, DOL's efforts to set Statewide AEWRs have always been in response to instances where it was thought that wage depression existed in specific crops or activities. (DOL consistently has set Statewide AEWRs. Because of the absence of data from which to measure wage depression at the local level and becasue of the vast number of different crops, activities and areas in which such local AEWRs would have to be set, it was and is administratively infeasible to set AEWRs for specific crops or activities.) The fact that the pre-June 1, 1987, AEWRs were higher than the USDA average in most (but not all) States is the *result* of other methodologies that were distinctly different from that of adding an explicit enhancement to a Statewide USDA earnings rate. These previous methodologies included setting AEWRs at or *below* the USDA average (early 1960's); assuming that agricultural wage rates should have increased by the same percentage as manufacturing wage rates (1965); setting an absolute floor and an absolute ceiling as well, both regardless of the comparison with manufacturing wages (1965); and assuming that the rates in all States should have increased by the same *absolute* amount (20 cents) as the increase in the national USDA rate (1967). These different methodologies do not appear to have measured wage depression accurately. For example, in 1965, DOL used increase in manufacturing wages as a proxy for increases in agricultural wages, which were believed to be depressed. The application of this methodology led to AEWRs which were higher than Statewide agricultural earnings in some States and lower in others. In order to address these erratic results, DOL imposed a minimum and maximum AEWR.

If it had been DOL policy to enhance the USDA Statwide or regional rates, some degree of uniformity or consistency of relationship between the old AEWRs and the USDA rates, or at least some recognizable pattern relating to estimated presence of illegal aliens, should have been apparent. However, such was clearly not the case. In fact, under the older methodology there would have been four States (Delaware, Oregon and Washington) in 1987 with AEWRs *below* the applicable USDA average wage rates. These include at least three States with known heavy concentrations of illegals—Washington, Oregon and Florida. This fact very clearly contradicts any assumption that DOL has had a longstanding policy of enhancing USDA average wage rates. At the other extreme, there would have been six States with AEWRs 70 percent or more above the USDA rate. None of these States—Nevada, Alabama, Utah, Minnesota, Mississippi, and South Carolina—is noted for high concentrations of illegal aliens.

Moreover, none of the DOL methodologies ever attempted to measure, with any degree of accuracy, the actual amount by which prevailing wages had been depressed (*i.e.*, adversely affected) by the employment of alien workers. They were simply rough efforts to compensate for what DOL believed was wage depression or stagnation caused by the importation of large numbers or workers under the Bracero program. Thus, the historical fact that the application of the various methodologies resulted in AEWRs which, in most cases, were higher than average agricultural wages is merely fortuitous. It does not reflect any determination that these enhancements themselves were the correct measure of the compensation necessary to eliminate the past adverse effects caused by the Bracero workers.

V. Explanation for Retaining the Methodology in the Interim Final Rule

Following the DC Circuit's decision in *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, DOL has extensively reexamined the issues involved in establishing AEWRs for the H–2A program. As explained in the preamble to the June 1, 1987, interim final rule, application of the previous methodology (applied in only 14 States) to a nationwide (49 State) H–2A program would produce inexplicable and unjustifiable results. 52 FR 20404. As a result of the anomalies created by broad application of the old AEWR methodology, DOL determined that a new methodology for setting AEWRS is needed, one that is capable of rational application across the country. DOL promulgated the June 1, 1987, methodology, believing that it satisfied this requirement.

DOL has chosen to use the USDA survey of farm and livestock workers because it presents the best available data on hourly wages in the agricultural sector. The USDA conducts a scientific quarterly survey of the wages of farm and livstock workers. The survey includes small farms not covered in other surveys. The scope and frequency of the survey means that all crops and activities now covered by the H–2A program will be included in the survey data and that peak work periods also will be covered.

Because DOL anticipates that enforcement of IRCA will give rise to a significant expansion of the H–2A program to new States, crops and activities, DOL has decided to set AEWRs for all States, except Alaska, for which USDA data are unavailble. The promulgation of nationwide AEWRs will give new entrants to the H–2A program the opportunity to know in advance the wages they will be required to offer if

they choose to apply for H–2A workers and will avoid the delays, uncertainties and litigation that have occurred in the past when new States were sought to be added to the H–2A program.

In light of the DC Circuit's decision in *American Federation of Labor and Congress of Industrial Organizaitons* v. *Brock*, DOL has reviewed its past practices in setting AEWRs, as described in Section IV above, and has reviewed the available literature on the effects of legal and illegal immigration to determine whether, and *to what extent*, wage depression caused by lawful and illegal alien workers exists in the agricultural labor market. Included in this review were several studies published quite recently. For the reasons outlined below, this analysis has reconfirmed DOL's belief that the June 1, 1987, methodology is valid and appropriate for ensuring that the importation of H–2A workers will not adversely affect the wages of similarly employed domestic workers.

A. Recent Studies Suggest that the Extent of Past Adverse Effect, If Any, From the Employment of Illegal Aliens, Has Been Small and Confined to Local Labor Markets and Not Reflected to Any Significant Degree in the USDA Data Series From Which the AEWR Is Derived

While DOL has believed that there is a tendency for illegal alien workers to adversely affect wage rates, it cannot disregard recent studies and analyses which conclude that such effect probably has been minor and localized. Many of these studies were conducted during the past few years, during the time IRCA was being debated, prior to enactment, and also since enactment. They have been conducted by some of the most prestigious research and evaluation organizations, applying the most rigorous state-of-the-art methodological standards. They include studies and analyses performed by the Council of Economic Advisers, the General Accounting Office, the National Commission for Employment Policy, the National Bureau of Economic Research, the Urban Institute, and other prominent individual researchers.

The 1986 *Economic Report of the President*, prepared by the Council of Economic Advisors, summarizes an extensive review of recent research and economic thinking on wage and employment effects of immigration. The Council's conclusion as to wage effect is mixed:

> *Some* studies of the effects of immigration on wage levels have revealed evidence of adverse wage effects. For example, one study concluded that real wages were 8 to 10 percent lower on average *in cities near the Mexican border*. Several studies found a reduction in the wages of unskilled workers *in areas with high concentrations* of unskilled immigrant workers.
>
> *Other studies*, however, have shown that greater concentrations of aliens in labor markets are associated with *higher earnings* of native-born workers. Increased wages have been found both for broad groups of workers and also for native-born minority groups with whom immigrants might compete directly for jobs.

(Emphasis added; *Id.* at 223)

The General Accounting Office (GAO), responding to a Congressional request, surveyed the existing literature on the effects of illegal aliens on the wages and working conditions of legal workers. (*Illegal Aliens: Influence of Illegal Workers on Wages and Working Conditions of Legal Workers* (GAO/PEMD–88–13BR) (March 1988)). Initially, 230 studies were reviewed; these were pared down to 26 which met GAO's standards for relevance and analytical rigor. With respect to the question, "Do illegal alien workers depress wages and worsen working conditions for native and legal workers?", GAO came to the following qualified and uncertain conclusion:

> With regard to the first question, our answer is a qualified "yes." Our major finding, based primarily on results from nine case studies, is that illegal aliens do, *in some cases*, exert downward pressure on wages and working conditions within low-wage, low-skilled jobs *in certain labor markets*. The four case studies that supported this finding examined illegal alien workers in competition for the same jobs with legal or native workers. Competing native or legal *agricultural workers*, food processing workers, and janitors *in specific labor markets* suffered depressed wages or worsened working conditions as employers in these sectors began to hire a higher percentage of illegal workers.
>
> In three *other sectors and labor markets*, the effects of illegal workers on legal or native workers' wages and working conditions overall *could not be determined*. The five case studies on these sectors or markets provided evidence that the increased supply of workers for *some* job categories, in *some* business and industry sectors such as the garment industry, depressed wages for some native or legal workers but, at the same time, by stimulating business, also expanded employment opportunities and wages for *other* legal and native workers in complementary, usually skilled occupations. None of these studies, however, permitted an assessment of net effects. This suggests that the effects of illegal workers on the wages and working conditions of native or legal workers are not *automatically* in the direction of depressing those conditions, and that those effects depend on a number of factors, of which the illegal status of the workers is one.

(Emphasis added, except *"automatically,"* which is in original; *Id.* at 1–2)

It should be noted that the only wage depression shown in agricultural employment cited in the GAO report appeared in two limited, localized, studies of San Diego County, California, pole tomatoes and Ventura County, California, citrus. GAO itself noted that these studies were probably atypical.

> The case studies also may poorly represent workplaces that employ international migrants. For example, most of the studies that found wage depression overall were on unionized settings. Substantial evidence indicates that unionization tends to lead to higher wages. In these cases, a part of the effect that illegal aliens may have had on wages was to counteract the effect that the unions had had on wages.

(*Id.* at 64 n 1.)

Thus, the wage-depressing effects noted in the studies may have had as much to do with anti-union activities as any other motive and might have occurred even if the non-union workers been legal workers.

Further, GAO pointed out that other economic forces also may come into play in determining whether the removal of illegal workers will necessarily raise wages:

> [O]ne cannot assume that the absence of illegal aliens would, in all cases, cause an increase in wages and job opportunties for native workers. In some cases, the higher wages necessary to bring workers into a given labor market would possibly raise the employer's costs to a level that prevents the employer from competing effectively with foreign producers.

(*Id.* at 64)

It also must be noted that DOL submitted critical comments on the draft GAO Report. *Id.* at 57–62. These comments were directed at the adequacy of the GAO analysis with respect to adverse impacts of employing illegal workers in specific occupations and activities in local labor markets. These comments did not take issue with the GAO finding that the effects of employing illegal workers are difficult to detect at levels of analysis beyond specific activities in local labor markets.

The National Commission for Employment Policy also reviewed the available literature in 1986 and came to a similar qualified conclusion (*Illegal Immigrants and Refugees—Their Economic Adaptation and Impact on Local U.S. Labor Markets: A Review of the Literature* (October 1986)):

> The evidence regarding the labor market impact of undocumented entrants is *mixed and somewhat inconclusive*. Undocumented workers do displace some native-born U.S.

workers and do lower wages and working conditions in *some* occupations and *geographical areas.* The opportunities for U.S. workers sometimes are reduced where undocumented workers dominate segments of the labor market. On the other hand, undocumented workers in some instances create and perpetuate jobs for themselves as well as for some U.S. workers. Furthermore, they help to preserve some U.S. firms that, without such a supply of foreign labor, might move their operations overseas. *The evidence is not conclusive regarding the overall or aggregate effects on the labor market.* Rather the evidence suggests that the labor market effects of undocumented workers may best be viewed as *a series of local and regional effects which vary widely.*

(Emphasis added; *Id.* at vii)

The National Bureau of Economic Research (NBER) has just completed a two-year research project on the internationalization of the U.S. labor market, including the impact of immigration on wages and employment. Its findings question whether immigrants have had any adverse effect on the wages of U.S. workers (*NBER Summary Report: Immigration, Trade, and the Labor Market* (January 20, 1988)):

Increased immigration has *some modest adverse impacts* on the employment and wages of workers who are the closest substitutes for immigrants, *the immigrants themselves* and earlier immigrants, but *little, if any, impact on young black and Hispanic Americans who are likely to be the next closest substitutes* (Topel and Lalonde). Employment and wages of less educated black and white natives have not worsened noticeably in cities in which immigrant shares of the population rose in the 1970's, while on the positive side, there is some evidence that less skilled natives have moved out of low-wage service and manufacturing industries and that these industries have grown more rapidly or declined more slowly in cities with more immigrants (Altonji and Card). The broad implication is that *immigrants have been absorbed into the American labor market with little adverse impact on natives.*

(Emphasis added; *Id.* at 7)

An Urban Institute study of the impact of the large population of Mexicans immigrating, both legally and illegally, into Southern California found the following with respect to effect on wages (*The Fourth Wave: California's Newest Immigrants* (1985)):

The presence of Mexicans and, in all likelihood, of other immigrant groups, reduced the average wages in manufacturing and *some* services, both in Los Angeles and elsewhere in California. This reduction in average wages primarily reflects the increasing share of Hispanics in the work force, since wages for this group are lower than for non-Hispanics in similar occupations. We also conclude that the presence of immgrants has *somewhat depressed the wages of non-hispanics* working as laborers, but the impact on the *wages paid to non-Hispanics* in semi-skilled occupations *appears to be negligible.* The principal reasons why immgrants received lower wages are that they are less likely to be unionized and they have less experience and education than other workers.

(Emphasis added; *Id.* at 123)

Specifically with respect to agriculture, Dr. Phillip L. Martin, Professor of Agricultural Economics, University of California at Davis, in a study conducted for DOL, raises serious doubts as to whether illegal aliens have adversely affected agricultural wage rates (*IRCA and the U.S. Farm Labor Market* (February 1988)):

If illegal alien workers are replaced by U.S. citizens, legal immigrants, and legal non-immigrants, there will be *offsetting effects on farm wages.* Generally, the illegal aliens and the legal non-immigrants are "solo men" (in the U.S. without families); such workers *tend to earn more per hour at pervailing piece rates than more diverse U.S. workers.* Some illegal aliens are "isolated and powerless;" to the extent that such illegal aliens are replaced by other workers, there should be upward pressure on farm wages.

(Emphasis added; *Id.* at 1)

Dr. Martin states in the same report, "*The evidence of these possible wage-depressing effects of illegals is sparse.* [Emphasis added.]" *Id.* at 8. As indicated above, one of the main reasons for Dr. Martin's doubt about adverse effect is the fact that aliens often have higher productivity than U.S. workers, so that when paid by the piece their average hourly earnings exceed those of U.S. workers, thus possibly even raising the average wage rate. As he states, "Illegal alien farmworkers tend to be young men; such solo men tend to be the most productive farmworkers in the sense that *they have higher-than-average hourly earnings at prevailing piece rates.* [Emphasis added.]" *Id.* at 14.

Even if there may have been adverse effects on agricultural wages from the employment of illegal aliens, they apparently have been so concentrated in specific crops, activities, and areas that such effects do not appear to be reflected to any significant degree in the USDA data series, which includes all agricultural activities, usually in multi-State regions. Dr. Martin states as his first major conclusion in his 1988 study cited above:

The removal of illegal alien workers should raise farm wages. However, illegal alien workers ar not uniformly distributed throughout agriculture; instead, they are concentrated in particular tasks, commodities, areas, and on certain farms. Thus the *wage increases traceable to the removal of illegal alien workers may not be apparent in regularly-published wage data* such as *Farm Labor.*

(Emphasis added; *Id.* at 1)

Clearly, if the removal of illegal aliens may not signficantly affect the USDA wage data, their presence also may not affect this series to any significant extent. (Note: The USDA periodical *Farm Labor* is the publication containing the USDA data series on which AEWRs are based.)

This view is strongly supported by the 1988 GAO report cited above:

Our experience in the prior synthesis on illegal workers (GAO/PEMD–86–9BR) suggested the general lesson that *wage depresssion is harder and harder to detect at levels of analysis beyond or above a highly localized and occupation-specific labor market.* For example, we found evidence of displacement of legal citrus pickers by illegal ones in Ventura County, California, but those effects probably would not be evident in data on agricultural workers in central California generally and even less so at higher levels of aggregation such as unskilled workers in the state. Thus, case studies that concentrate on specific industries or sectors in labor markets in specific communities may be better able to detect wage depression than aggregate data.

[Emphasis added; *Id.* at 10.]

Evidence suggesting that the USDA eage rates have not been affected significantly by the presumably lower wages paid to illegals is provided by State average wage data from that USDA data series itself. An examination of average agricultural earnings in the six States most likely to have the highest concentrations of undocumented workers, as measured by the highest concentration of seasonal crop workers, and as shown in the USDA data published in *Farm Labor,* does not reveal a consistent pattern of depression in the USDA earnings data over time. Over the 1974–87 period (the longest period with consistent USDA survey data), average agricultural earnings in North Carolina, Oregon, Texas and Washington increased by more than the national average. Only Califronia and Florida had increases that were below the national average. However, the absolute level of wage rates in both California and Florida is well above the national average.

B. The AEWR Methodology in the Interim Final Rule Is Justified By the Available Evidence

From DOL's review of the available information on the agricultural labor market, DOL views the data and literature as inconclusive on the issue of adverse effect or wage depression from the presence of illegal alien workers on the USDA data series. This inconclusiveness is due, in part, to

statistical difficulties in measuring wage depression, but also reflects the fact that data on illegal workers are nearly impossible to obtain for purposes of measuring any possible wage depression caused by such workers. DOL is aware of no study that has quantified or measured any wage depression at any aggregate level such as the State or the region. To the extent that there is some anecdotal evidence of wage depression from these sources, the evidence also suggests that the adverse effects are highly localized and concentrated in specific areas and crop activities. The evidence further suggests that because of the nature of the illegal alien workforce, and because of the concentration of that workforce in particular localities and crops, such adverse effects as may exist are not reflected, to any substantial extent, if at all, in USDA average wage data.

Thus, DOL concludes that setting the AEWR at the level of average agricultural wages, as determined by the USDA survey, is the correct approach. To the extent that wage depression does exist on a concentrated local basis, the average agricultural wage does not appear to be significantly affected by this wage depression. Further, none of the studies reviewed by DOL here quantified or measured any wage depression that might exist in the USDA data series. This series is, therefore, the appropriate source of rates to use to set the AEWR. Based on all of the information available, there is no justification for adding any enhancement to the USDA average agricultural wage. Such an explicit enhancement could only be justified if alien agricultural employment has depressed average agricultural earnings, and if the extent of the depression can be measured at the aggregate level.

Even though the evidence is not conclusive on the existence of past adverse effect, DOL still believes that its statutory responsibility to U.S. workers will be discharged best by the adoption of an AEWR set at the USDA average agricultural wage in order to protect against the possibility that the anticipated expansion of the H–2A program will itself create wage depression or stagnation.

As pointed out in the preamble to the June 1, 1987, interim final rule, the old methodology had resulted in anomalies among the State rates which could not be explained in any rational manner relating to presence of illegal aliens and past adverse effect. See 52 FR at 20504. In light of: (1) The recent studies cited earlier which indicate that it is highly questionable as to whether and how much adverse effect has occurred from the use of illegal aliens; (2) the likelihood that any adverse effect which might have occured may not be reflected in the USDA data series; and (3) the apparent anomalies in that old AEWR methodoogy, it is clear that adding to that USDA average any enhancement factor comparable to that resulting from the old methodology—such as the observed 20 percent average in the 14 States for which old AEWRs were published—would be inappropriate. Even if one were to assume (despite the absence of evidence) that there has been some adverse effect on the USDA rates in States with larger concentrations of illegal aliens, applying an enhancement factor across-the-board to all States clearly would be inequitable and inappropriate.

VI. Other Considerations in Developing an AEWR Methodology

DOL must assume that IRCA will achieve its stated purpose of removing illegal aliens from the labor force. See 8 U.S.C. 1324a. (One might note that AEWRs, if set too high, might be a disincentive to the use of H–2A and U.S. workers, and could undermine efforts to eradicate the employment of illegal aliens.) Agricultural employers who have employed illegal alien workers in the past then must fill their labor needs with U.S. workers (including special agricultural workers authorized under IRCA) or with H–2A workers. All of these will be covered by various wage and working condition protections, and the total number may well fall short of the pre-IRCA agricultural labor force. These changed conditions could tend to create upward pressures on agricultural wage rates.

Within this context, the AEWR requirement in the H–2A program could contribute to upward wage pressures. Non–H–2A employers will be forced to compete for workers with H–2A employers at the wage rates required in the H–2A program. Using the USDA average as the AEWR will probably have some "ratcheting" effect on wages, as the previous year's *average* becomes the current year's *minimum*. This will be particularly true if the number of covered workers (H–2A workers and their U.S. co-workers) at the wage rates required in the H–2A program expands significantly. As a result, requiring an enhancement to the USDA average rate as the AEWR could increase labor costs of employers of H–2A workers and weaken their ability to compete with foreign imports. Lower domestic production could reduce the demand for labor, adversely affecting both wages and job opportunities for U.S. workers whom IRCA was designed to protect.

These effects would also be inconsistent with the purpose of the labor certification process, as recognized by the courts, that the temporary foreign worker regulations are "to promote a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156 (1st Cir. 1977). As part of the labor certification process, the setting of AEWRs must balance the needs and interests of U.S. workers and U.S. employers. See *Flecha* v. *Quiros*, 567 F. 2d at 1155–1156; *Rogers* v. *Larsen*, 563 F. 2d 617, 626 (3rd Cir. 1977); and *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974).

The IRCA amendments to the INA do not change the role and effect of the statutory policy to protect the wages of similarly employed U.S. agricultural workers from the adverse effect which may result from the employment of alien workers. Under the H–2A program, as under the H–2 program before it,

> [t]he common purposes [of the program] * * * are to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals. Clearly, citizen-workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force.

Rogers v. *Larsen*, 563 F. 2d 617, 626 (3d Cir. 1977); *Flecha* v. *Quiros*, 567 F. 2d at 1154. As stated by the U.S. Court of Appeals for the First Circuit, the purpose of the INA and temporary foreign worker regulations are "to provide a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 657 F. 2d at 1156.

> We start with a given, that it has always been a Congressional policy to prefer domestic workers in all fields. However, it is also necessary to consider would-be employers, although in case of conflict, wide leeway favoring domestic workers is given the U.S. Secretary [of Labor]. *Elton Orchards, Inc.* v. *Brennan*, 1 Cir., 1974, 508 F. 2d 493 * * *

Id., 567 F. 2d at 1155. Thus, the methodology for computing an AEWR must recognize the need to balance the goals of supplying an adequate labor force to employers and protecting the jobs of U.S. workers.

"[R]ather than an area of pure statutory interpretation as to which there is in theory only a single answer", *Building & Construction Trades' Department, AFL–CIO* v. *Donovan*, 712 F.2d 611, 619 (DC Cir. 1983), *cert. denied*,

464 U.S. 1069 (1984), DOL has "broad discretion" to set AEWRs in accordance with "any of a number of reasonable formulas * * * *" *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F.2d 299, 303–304 (5th Cir. 1976). See *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912, 915 n 5 (DC Cir. 1987); *Florida Fruit & Vegetable Association, Inc.* v. *Donovan*, 583 F. Supp. 268 (S.D. Fla. 1984), *aff'd sub nom. Florida Fruit & Vegetable Association, Inc.* v. *Brock*, 771 F.2d 1455 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 1524 (1986); *Shoreham Cooperative Apple Producers' Association, Inc.* v. *Donovan*, 764 F.2d 135 (2d Cir. 1985); *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F.2d 90 (4th Cir. 1985); *accord, Rowland* v. *Marshall*, 650 F.2d 28 (4th Cir. 1981) (*per curiam*); *Williams* v. *Usery*, 531 F.2d 305, 306 (5th Cir.), *cert. denied*, 429 U.S. 1000 (1976); *Flecha* v. *Quiros*, 567 F.2d 1154 (1st Cir. 1977); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F.2d 499 (9th Cir. 1964); and *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); see also *Production Farm Management* v. *Brock*, 767 F.2d 1368 (9th Cir. 1985). DOL believes that the June 1, 1987, methodology is the appropriate method by which to set AEWRs in light of its obligations to balance the needs of U.S. workers and U.S. employers and in light of its great discretion to develop any reasonable formula to set AEWRs.

VII. Conclusion

The AEWR is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers must offer to and pay their U.S. and alien workers, if prevailing wages and any federal or State minimum wage rates are below the AEWR. The AEWR is a wage floor, and the existence of an AEWR does not prevent the worker from seeking a higher wage or the employer from paying a higher wage.

The purpose of an AEWR, as described by the U.S. Court of Appeals for the Fifth Circuit, is "to neutralize an 'adverse effect' resultant from the influx of temporary foreign workers." It is a "method of avoiding wage deflation." *Williams* v. *Usery*, 531 F.2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; see *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F.2d 299 (5th Cir. 1976); see also *Production Farm Management* v. *Brock*, 767 F.2d 1368 (9th Cir. 1985); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F.2d 499 (9th Cir. 1964); *Dona Ana County Farm and Livestock Bureau* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); and 20 CFR 655.0) (1986). The AEWR thus ensures that the wages of similarly employed U.S. workers will not be adversely affected by the lawful importation of temporary, nonimmigrant alien workers. For the reasons outlined above, DOL believes that the June 1, 1987, methodology satisfies DOL's duties under IRCA to ensure that the importation of H–2A workers does not adversely affect the wages of similarly employed domestic workers.

VIII. Request for Comments

DOL requests comments on the proposed rule. Specifically, any additional studies or evidence as to known and measured wage depression reflected in the USDA data series caused by the presence in the agricultural work force of illegal aliens will be very helpful to enable DOL to further examine the conclusions drawn from the materials reviewed. While most of the studies cited in this document are publicly available, the study by Dr. Martin is not available generally. DOL has supplied copies of the Martin study to the parties in the *AFL-CIO* v. *Brock* litigation and will supply, upon request, copies to any other interested person. Copies may be obtained by writing to or calling the contact person listed at the beginning of this document.

Regulatory Impact

This document affects only those employers using nonimmigrant aliens workers (H–2A visaholders) in temporary agricultural jobs in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that this proposed rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forest and forest products, Guam, Labor, Migrant labor, Wages.

Proposed Rule

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations, is proposed to be amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. In 20 CFR Part 655, the authority citation is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184(c), and 29 U.S.C. 49 *et seq.*;

§§ 655.00, 655.00, and 655.00 also issued under 8 U.S.C. 1186 and 8 CFR 214.2(h)(4)(i);

Subpart A and Subpart C also issued under 8 CFR 214.2(h)(4)(i);

Subpart B also issued under 8 U.S.C. 1186.

2. Section 655.107(a) is republished to read as follows:

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The Director shall publish, at least once in each calendar year, on a date or dates to be determined by the Director, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the Federal Register.

* * * * *

Signed at Washington, DC, this 25th day of October 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–24954 Filed 10–27–88; 8:45 am]

BILLING CODE 4510–30–M

20 CFR Ch. V

Worker Adjustment and Retraining Notification Act; Solicitation of Comments in Advance of Proposed or Interim Final Rulemaking; Discussion Paper

AGENCY: Employment and Training Administration, Labor.

ACTION: Solicitation of comments in advance of proposed or interim final rulemaking.

SUMMARY: On September 16, 1988, the Department of Labor (DOL) published a notice in the **Federal Register** soliciting comment from interested parties regarding the implementation of Pub. L. 100–379, the Worker Adjustment and Retraining Notification Act (WARN). These comments were to advise DOL on the degree of statutory interpretation which was believed to be most appropriate for regulations which the Secretary of Labor will prescribe pursuant to section 8 of WARN. Based on those comments received on a timely basis, and study of the legislative history, the Department is now publishing for public comment a paper which reviews sections 2, 3, 4, and 11 of the WARN statute and discusses questions raised by commenters regarding the interpretation of relevant sections of the Act in the rulemaking which will follow the close of this latest comment period.

DATES: To receive consideration, comments must be received at DOL as soon as possible. Attention is drawn to the tight timeframe. All timely comments will be reviewed and considered in the process of drafting regulations, but in view of a possible interpretation of the effective date provision discussed below, DOL may publish interim final regulations by December 2, 1988. The preamble to those regulations may not extensively discuss all comments.

ADDRESS: Submit comments to Dolores Battle, Office of Job Training Programs, Employment and Training Administration, Room N–4459, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION: In response to the September 16 publication, the Department received a total of 43 timely individual letters of comment. To adjust for the Columbus Day holiday, comments received as late as the afternoon of October 12 were formally considered, and late comments were reviewed to the extent possible. This response included comments from 11 companies, 5 national unions, 15 employer associations, 4 law firms, and 8 other comments from State officials, members of Congress, employee associations and citizens.

In the September 16 Notice, DOL first requested comment on "the extent to which the Department should issue interpretive regulations." The consensus among respondents from business and labor was that DOL should provide interpretive regulations where possible, in order to facilitate understanding of WARN provisions and for effective implementation of advance notice required by the Act. Commenters expressed strong concern about the potential for expansive litigation, and believe that DOL rulemaking can assist businesses and workers through definition of important terms and conditions set forth in WARN. The Department recognizes, as many commenters have also recognized, that this rulemaking will not address all of the many technical variations in industry and company-specific situations, given the diversity of U.S. company structures and employment arrangements.

The Department draws to the attention of the employer community the language of section 7 of WARN, "Procedures Encouraged Where Not Required." This provision presents the sense of the Congress that employers not otherwise covered under WARN who are taking action to lay off or terminate workers should voluntarily provide 60-day advance notice to employees. Although DOL's rulemaking will establish the principles for providing notice to affected workers and for applying statutory exclusions, exemptions, and reduced notice to proposed plant closings and permanent workforce reductions, it may be good business practice, as well as civically desirable, for employers to routinely provide advance notice to workers or their unions, the local chief elected official, and the State dislocated worker unit whenever possible.

The September 16 **Federal Register** notice solicited comment on "the extent that regulations are needed [and] the specific views of commenters on how particular sections of the law should be implemented through regulations." Commenters raised many points and concerns regarding each section of the statute. This notice will review the statute, identifying issues in sections 2, 3, 4, and 11, which may be interpreted through DOL rulemaking.

It is the Department's intent, through these regulations and through the Trade Adjustment Assistance Program (TAA) and Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) regulations, to provide for maximum coordination of the actions and activities of these programs to assure that the negative impact of dislocation on the workers is lessened to the extent possible. While this coordination will be primarily addressed through TAA and EDWAA regulations, the WARN regulations will also deal with the topic where appropriate.

The Statute, Issue by Issue

DOL is seeking to establish principles for broad application of WARN's requirements. In reviewing the following selection of key issues and comments, DOL points out again that its regulations cannot specifically address all situations and possibilities.

The issues discussed in this paper are preliminary. DOL believes that the interpretations suggested in the text are reasonable but recognizes that other reasonable interpretations exist. DOL does not intend by publishing this paper to adopt any final positions on, or interpretation of, WARN. DOL will carefully review all comments before adopting regulations. As noted in the discussion that follows, the question of whether or not to issue interpretative regulations on a number of specific issues is still open, and the Department may decide, after considering comments received, that an appropriate alternative may be not to issue regulations on some issues covered in this paper.

1. Effective Date—Section 11 of Act

WARN has an effective date of February 4, 1989. Section 3(a) of WARN states "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice * * *."

A number of commenters believe that this language should be interpreted to require that employers must provide full 60-day notice in advance of planned plant closings or mass layoffs occurring after the effective date, i.e., any actions planned to occur on or after February 4, 1989 would be subject to the full 60-day notice requirement, requiring notice on or after December 6, 1988.

A second group of commenters interpreted the effective date provision as requiring notice to be given only for actions which will occur 60 days after February 4, 1989, i.e., notice would be required only for actions occurring on or after April 5, 1989.

A third group interpreted the law as meaning that an employer must give such advance notice as is possible for

all covered employment actions that occur after February 4, 1989, e.g., for a layoff occurring on March 6, 1989 the employer would be required to provide 30 days' notice.

Since reasonable arguments can be made to support all three interpretations, many commenters requested clarification on this issue. In order to avoid potential liability, prudent employers may wish to anticipate the adoption of the first interpretation, and be prepared to provide 60-day advance notice, as early as December 6, 1988, for any covered employment actions which are planned to occur on or after February 4, 1989.

2. Definition of Employer—Section 2(a)(1)

Commenters have raised a range of interpretative issues having to do with the meaning of the term "business enterprise" and the form of a business organization. These include whether and to what extent subsidiaries which are wholly or partially owned by a parent company are separate employers for the purpose of WARN, and to what extent independent contractors can be considered separate from their business clients. Questions have been raised regarding the coverage of non-profit organizations, and public and quasi-public organizations which perform commercial work.

In response to questions raised, it appears that there are conditions under which all of these entities can be considered as "employers" within the meaning of the Act. In developing general principles for its regulations, DOL will look for guidance to existing statutes such as the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), the Employee Retirement Income Security Act (ERISA) and interpretations thereunder.

3. When to Measure Whether a Mass Layoff Has Occurred—Section 2(a)(3)(B)

The point at which the number of employees should be measured for the purpose of determining coverage and whether the 38% threshold for a mass layoff has been reached could be a "snapshot", or an average calculated over a period of time.

In response to some comment letters, it appears that a "snapshot" of the employment level at the time notice is required to be given will be the basic rule to apply in the majority of cases, but circumstances may arise where it would be appropriate to use an average employment figure. In such cases, any intent of the employer to evade the Act by reducing employment levels over time would appear to be the paramount consideration in any subsequent civil action.

4. Single Site of Employment—Section 2(a) (2) and (3)

While some commenters have suggested that DOL not regulate on this isuse, DOL has received numerous comments concerning possible definition of the term "single site of employment". Comments and the legislative history suggest that a "single site" means more than just a single building.

The common thread in determining what is a single site would appear to be a sufficient degree of geographic contiguity as well as an operational connection. Several buildings which are part of a "campus" would be an obvious example of a single site. On the other hand, geographically separate buildings (i.e., several blocks or miles apart) would not appear to constitute a single site unless they were part of a single operation. An example of such an exception might be two warehouses several blocks apart sharing the same staff and equipment.

5. Facilities or Operating Units—Section 2(a)(2)

Numerous comments point to the wide variety of possible workplace and organizational arrangements within a single site that might constitute a "facility or operating unit." It has been suggested by many commenters that DOL regulations deal with questions regarding traveling sales forces, different assembly or product lines, teams of workers with the same occupation or skill, and different departments and divisions. Comments suggest that "facility" refers to a building or buildings, and "operational unit" refers to a product, task, or specific work function within or across facilities at the single site.

For workers whose primary duties require travel from point to point (e.g., railroad workers, bus drivers, salespersons), the facility or operating unit to which they are assigned as their home base might define the unit in which they are covered for WARN purposes.

6. Determination of Plant Closing and Mass Layoff Date—Section 2(a) (2) and (3)

Several commenters raised questions about determining the plant closing or mass layoff date when all employees are not terminated on the same date.

In response to questions raised, the date of the first individual termination within the statutory 30-day period triggers the 60-day notice requirement. The Act provides that each subsequent group of terminees is entitled to a full 60-day notice. Therefore, in order to address the concerns of commenters one possible approach is described below.

Employers may wish to look ahead 30 days and behind 30 days to determine whether planned employment actions in the aggregate trigger the coverage of the Act. In the case of the possible application of section 3(d) of the Act, the employer may wish to look ahead and behind for 90 days.

Employers may wish to exercise care in making an accurate determination of the effects of planned employment actions, since a failure to do so will subject the employer to the civil penalties of the Act. Also, it is noted that while the 60-day period is the minimum for advanced notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice.

7. Plant Closing or Mass Layoff?—Section 2(a) (2) and (3)

A number of commenters have raised the possibility of a different characterization of the same termination action (i.e., plant closing and mass layoff) depending upon the definitions. The Act provides that plant closings, which can be triggered by the termination of a smaller number of workers than a mass layoff, involve the shut-down of one or more distinct units within a single site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

8. Definition of "Affected Employees"—Section 2(a)(5)

Questions arise in determining who the affected employees are where bumping rights apply. The Act appears to be clear that "affected employees" includes those incumbents in positions that are to be eliminated. In response to comments, it appears that the intent of WARN can be interpreted to require that notice be given to other employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified 60 days in advance.

A second question arises concerning the number of "affected employees" to be used in determining whether coverage thresholds are met, i.e., whether to count only incumbents, or both incumbents and bumped workers. It appears that only incumbents should be counted in determining whether coverage thresholds have been reached.

Questions have been posed whether "affected employees" includes supervisory and managerial workers. It would appear from the legislative history that such workers are covered.

9. Definition of Employment Loss—Section 2(a)(6)

Commenters viewing this question from different perspectives point out that the essential nature of the loss is of the worker's job rather than the loss of compensation. While some commenters suggested that plans for income subsidies after the loss of employment do not constitute "employment loss", it would appear that the loss of work, not the loss of income, would satisfy the definition of the term "employment loss."

Another issue raised was whether a reduction in hours of work of more than 50% is to be measured in the aggregate or for each employee individually. It would appear that the reduction of hours would be applied to each employee.

Questions also were raised about whether voluntary retirement(s) or departure(s) resulting from incentive programs are covered as employment losses. It would not appear that truly voluntary departure(s) would be covered as employment losses.

10. Definition of "Part-time Employee"—Section 2(a)(1), 2(a)(2), 2(a)(3) and 2(a)(8)

DOL received comments regarding the definition of "part-time employee". Reviewing the statute, it appears that the term "part-time employee" was intended to cover employees who work on average fewer than 20 hours per week, or workers who would traditionally be understood as short-time, "seasonal" employees.

In response to questions, regular full-time employees with tenure of less than 6 of the last 12 months appear to be part-time employees for purposes of WARN. While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers would appear to be "affected employees" and due notice.

Other commenters asked that a period be specified for calculating whether a worker has worked "an average of fewer than 20 hours per week." It appears that a reasonable period for making this calculation may be the shorter of the actual time the worker has been employed or 90 days.

11. Responsibility for Notice: Seller and Purchaser—Section 2(b)(1)

Despite several comments proposing that regulations limit the responsibility of the buyer to provide notice to employees of a business it has purchased, the Act and legislative history appear to support the view that the full responsibility to notify any workers to be terminated remains with the seller up to and including the effective date of the sale and is assumed by the purchaser beginning on the day after the effective date of the sale. To the extent that the seller was aware of pending termination plans, the seller would appear to be required to give notice. If the seller fails to do so, it appears that the seller may be liable for its failure. If the buyer has been silent about any plans to reduce the workforce, the seller may not be liable to give notice prior to sale. It may be prudent for the buyer and seller to determine the impacts of the sale of workers and to give notice.

This subsection of the Act states that, "* * * any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale." This provision appears to preserve the tenure of the employees of a business that has been sold.

12. Offers to Transfer Employees—Section 2(b)(2) (A) and (B)

Questions were raised about the criteria to be used in determining whether an offer of a job transfer satisfies the requirements of the Act. While WARN is silent, it appears appropriate to interpret the term "transfer" to mean that the new job be regular, and be a reasonable transfer in terms of pay and working conditions, and be within reasonable commuting distance.

Many commenters asked for a definition of what constitutes a "reasonable commuting distance." One possible interpretation is to give it the same meaning as construed by the Internal Revenue Service in 26 CFR 1.119–1(d)(4) of their regulations. This regulation takes into consideration the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

In response to several comments, DOL notes that under section 2(b)(2)(B), the employer may become liable for failure to give notice if an offer to transfer beyond reasonable commuting distance is not accepted after the 60-day notice period has expired. An employer may, therefore, be well advised to provide 60-day advance notice as part of the transfer offer.

13. Notice to "Affected Employees" or Their Representatives—Section 3(a)(1)

Section 3(a)(1) of the statute provides for notice to affected workers or to their representatives to be served at least 60 days prior to any planned mass layoff or plant closing. In cases where affected employees are represented by one or more unions, the Act requires that notice be served upon the union(s). In cases where employees are not represented by unions, notice is to be given directly to each affected worker.

Several commenters raised questions about timing. It appears that Congress intended for this notice to have been received by the employees or by their representative for at least 60 days. The Department views any reasonable method of delivery to be acceptable (e.g., first class mail, timed for arrival at least 60 days before separation; personal delivery with optional signed receipt; insertion of notice into employees' pay envelopes).

Questions have also been raised about what constitutes effective service upon union representatives. The question is raised regarding which level of a union's hierarchy should be served. It appears that the notice should be served on the closest or most direct representative of the affected employees (i.e., the local union(s)). This notice should be served on the chief elected officer of each local union representing affected employees.

Several commenters requested separate service to both the employees and to their representative(s). The statue appears to be clear that service of notice to each union representing affected employees discharges the employer's obligation to provide advance notice to represented workers.

14. Notice to the State Dislocated Worker Unit and to the Local Government—Section 3(a)(2)

Several commenters were unclear about the identity of the State Dislocated Worker Program unit to which notice is to be sent. Since the States are restructuring to implement training under the EDWAA, service upon the Governor of the State might be viewed as constituting service upon the State Dislocated Worker Unit until such time as the Governor publishes appropriate State procedures for serving notice to the State Dislocated Worker Unit.

The issue has been raised about whether territories and insular areas are included as States under WARN. It appears that WARN was intended to operate in coordination with the State dislocated worker units created under the amended Title III of the Job Training Partnership Act (JTPA). For the purpose of WARN, a viable interpretation may be that the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Questions were also raised concerning the appropriate chief elected official to be notified in some localities. The identity of the chief elected official obviously will vary according to the local government structure. In the case of elected boards, it would appear that notice should be served upon the board's chairperson.

Questions also were raised about what taxes should be counted for purposes of determining "the unit of local government to which the employer pays the highest taxes." It appears that all local taxes paid to a "general purpose political subdivision of a State" should be aggregated for this purpose.

Several commenters raised questions about the timing of notice to State and local governments. It would appear that the transmittal of notice should be timed to allow both State and local officials to have notice in hand at least 60 days prior to the proposed employment action.

15. For How Long is Notice Effective?—Section 3(a)

Several commenters raised questions about whether a new notice is required to all parties if the date of a planned employment action is postponed. In response to these questions, it would appear that written notice should be given for any postponement. If the postponement is for less than 60 days, the 60-day notice requirements of WARN would not appear to apply and the notice should be given as soon as possible and should simply state the date to which the planned employment action is postponed and the reason(s) for this postponement. If the postponement is for 60 days or more from the originally scheduled date, it appears that a new notice should be given that complies with WARN, i.e., be given at least 60 days in advance and contain the information and be served on the parties as required by WARN. In response to comments, the Department may consider the establishment of this cutoff period in order to prevent intentional "rolling notice" (i.e., routine periodic notice).

16. Content of Notice—Section 3(a)

In response to comments, the Department suggests the following elements which might be included in the actual written notice. The Department invites comments on whether these or other elements should be described in regulations.

a. Notice to "affected employees"—Notice should be written in language understandable to the employee, and should include the name and address of the facility, a clear identification of the expected date when the plant closing or mass layoff will commence and, if different, the date on which the employee will be laid off or terminated. The notice should also identify whether the action is a permanent or temporary plant closing or a mass layoff, and if a temporary layoff, its expected duration to the extent known. This notice should also advise affected employees of the existence of any applicable bumping rights. In response to concerns raised in the legislative history, a fine print or "ticketed notice" (i.e., preprinted notice regularly included in each employee's paycheck or pay envelope) does not appear to meet the requirements of WARN. Further, the Department would recommend the inclusion of information on available dislocated worker assistance.

b. Notice to "each representative of the affected employees"—This notice should contain the name and address of the facility, the names and addresses of the employees represented by the union in positions to be affected, and the affected employees' job titles and numbers in each job classification. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations including the identification of bargaining unit members who will be laid off or terminated, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice should also indicate what other, if any, unions represent affected employees, and state the existence of any applicable bumping rights.

c. Notice to the "State dislocated worker unit"—This notice should contain the name and address of the facility, the affected employees' job titles and numbers in each job classification, the name of the union(s) representing the affected workers and the name and address of the chief elected officer of each such union. Where bumping is applicable, the notice should so state. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice also should identify a company official to contact for further information.

d. Notice to "chief elected official of the unit of local govenment"—The notice to the chief elected official of the jurisdiction where the plant closing or mass layoff is to occur should contain the name and address of the facility, the affected employees' job titles and numbers in each job classification, the name of the union(s) representing the affected workers and the name and address of the chief elected officer of each such union. Where bumping is applicable, the notice should so state. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice also should identify a company official to contact for further information.

17. Reduction Notification Period—Section 3(b)

Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. These conditions are:

(1) Where an "employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business";

(2) Where the dislocation event is "caused by business circumstances that were not reasonably foreseeable at the time the notice would have been required"; and

(3) Where a natural disaster has occurred.

Several commenters suggested that the Department should develop definitions of these three conditions that set objective standards by which employers may measure their conduct. The following discussion is an attempt to develop the outline of objective standards.

It appears clear from the legislative history of WARN that Congress intended these exceptions to the 60-day notice requirement to be narrowly construed.

Comments suggest that the definition of natural disaster can be objectively defined to include flood, drought, earthquake, storm, tidal wave/tsunami, and similar effects of nature. The legislative history provides some direction on the "natural disaster" basis for reduced notice, noting that employers may be required to prove that the plant closing or mass layoff is a direct result of a natural disaster. Commenters cited instances of indirect effects of natural disasters, which might be the basis for reduced notice under "business circumstances that were not reasonably foreseeable."

The Conference Report on H.R. 3 describes the burden of proof assumed by an employer choosing to use the "faltering company" basis for reduction of notification. The Act provides that the "faltering company" exception is applicable to plant closings and not mass layoffs.

To qualify for reduced notice under the "faltering company" exception, the Conference Report states that an employer must be able to demonstrate the existence of several facts or conditions. First, it must demonstrate that it was "actively seeking capital or business", that is, seeking financing or refinancing through the arrangement of loans, the issuance of stock, bonds or other methods of internally generated financing or that it was seeking, through any other commercially reasonable method, to obtain additional money, credit or business. The employer must identify specific actions taken to obtain capital or business. The employer must show that there was a realistic opportunity to obtain the financing or business. Its actions will be viewed in a company-wide context; thus, a company with access to capital markets or with cash reserves may not avail itself of this exception by looking solely at the financial condition of the plant or facility to be closed.

Second, the Conference Report states that the employer must show that the financing or business sought "if obtained, would have enabled the employer to avoid or postpone the shutdown." The employer must objectively demonstrate that the amount of money or financing or the volume of new business sought would have enabled the employer to keep the plant or facility open for a reasonable period of time.

Third, the Conference Report states that the employer must show that it "reasonably or in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business." The employer must be able to objectively demonstrate that it reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business of financing if notice were given, i.e., if the employees and/or the public were aware that the plant or facility might have to close. This element can be satisfied if it can be shown that the financing/business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

Commenters made a number of interesting observations concerning the "business circumstances that were not reasonably foreseeable" basis for reduction. The Conference report of H.R. 3 included language to help clarify this provision. "For example . . . a principal client of the employer may suddenly and unexpectedly terminate * * * a major contract; or an employer may experience a *sudden, unexpected, and dramatic* change in business conditions such as price, cost, or declines in customer orders." (Emphasis added).

The Conference Report suggests that the test for determining when business circumstances are reasonably unforeesable must focus on the employer's business judgment. An employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. On the other hand, employers should not be required to accurately predict general economic conditions that also may affect demand for their product. Furthermore, the primary objective indicator of a business circumstance that is reasonably unforeseeable will be that circumstances is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control, such as a strike at a major supplier or customer, an economic downturn or the closing of a major customer or supplier.

The Department recognizes that the definition of the faltering company and unforeseeable business circumstance bases for reduction of notice are complex and not easily defined. The Department is interested in comments which will help to further identify or define the general principles or factors that would help to define the situations in which these provisions apply.

Finally, the Department notes that in circumstances where reduced notice is authorized, the statute requires that "as much notice as is practicable" shall be given, with the addition of a "brief explanation of the basis for reducing the notification period." While a disaster may preclude full or even advance notice, the statute provides that the employer is still obligated to give notice, whether in advance of or after the fact of an employment loss caused by a natural disaster.

18. Determinations With Respect to Employment Loss—Section 3(d)

This section involves the application of the notice requirements of the Act in situations in which distinct but related terminations or layoffs occur within a 90-day period. A number of commenters noted that complexities associated with this provision. The comments did not, however, give direction additional to that in the Act and the legislative history, and the Department does not anticipate issuing any substantial interepretation of this provision through rulemaking.

19. Exemption, Limited Employment—Section 4(1)

Commenters sought further interpretation of the language in section 4(1), "hired with the understanding that their employment was limited." The legislative history indicates that the employers must clearly understand that their employment is temporary. While the Department sees that some guidance is possible to define how such an understanding may be clearly stated (e.g., by reference to employment contracts or employment practices of an industry or a locality) it appears that the burden or proof lies with the employer should there be questions regarding the temporary employment understanding.

For example, employees in construction and agriculture may frequently be hired for harversting, processing, or for work on a particular building. Such work may be seasonal but recurring. Such work might fall under this exemption. On the other hand, employers may also have permanent employees might work on a variety of jobs and tasks continously through most of the calendar year. Such employees might not be included under this exemption; therefore, in certain circumstances it may be prudent for employers to clarify temporary work understandings in writing when workers are hired. Giving written notice will not, however, convert permanent employment into temporary work, making jobs exempt from WARN.

It has been pointed out that certain jobs may be classified as related to a specific contract or order. Whether such jobs are temporary may depend on the duration of the job, whether the employee was specifically hired to work only on the job and whether the

employer expects that the contract or order is part of a long term relationship.

20. Exemptions: Strikes or Lockouts—Section 4(2)

WARN exempts from required notice plant closings that "constitute a strike or * * * a lockout not intended to evade the requirements of this Act." Economic strikers who have been permanently replaced also are not entitled to notice. The definitions of the terms of this provision are governed by the NLRA.

It appears that, in practical terms, the strike or lockout exemption was intended to apply only to lockouts and only to those lockouts that are related to collective bargaining and are not a subterfuge intended to evade the requirements of WARN.

Questions were raised about the secondary effects of strikes, that is, situations in which other plants, operating units or facilities are forced to close as a result of a strike by other workers, or at other plants or operations. It appears that this situation is not covered by the strike/lockout exemption but may be an unforeseeable business circumstance to which the reduced notice provisions of section 3(b) may apply. Thus, to the extent a strike is not reasonably foreseeable 60 days in advance, an employer may be entitled to reduce the notice period.

Questions were raised about whether notice is required to be given to non-striking employees in the same plant or facility. It appears that non-strikers are not covered by the exemption and are due notice if otherwise entitled.

21. Enforcement—Section 5

A number of commenters addressed the enforcement issue. No enforcement powers are delegated under WARN to DOL, or to State governments. The Department's role will be to provide information concerning its implementing regulations, and to revise these regulations as required. The Department therefore will not be in a position to make advisory rulings, or issue opinions or any actual cases. Enforcement and related functions are reserved for the courts.

Conclusion

Responding to the September 16 publication, commenters have in the Department's view been forthright and helpful in sharing their insights into WARN implementation, as well as raising what in their judgment are issues and problems. The Department appreciates this effort, and requests through this notice further advice in the development of appropriate interpretative regulations for WARN.

Signed at Washington, DC, this 24th day of October 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-25024 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-158-86, 160-86]

Excise and Income Taxes; 401 (k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication on Monday, August 8, 1988, beginning at 53 FR 29719 of the notice of proposed rulemaking. The proposed rules relate to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986, and nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code. These changes were made to the Code by the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, proposed rules relating to cash or deferred arrangements and nondiscrimination rules for employee contributions and matching contributions were published in the **Federal Register** (53 FR 29719). The amendments were proposed to conform the regulations to changes in the applicable tax law made by the Tax Reform Act of 1986.

Need for Correction

As published, the proposed rules contains a typographical error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the proposed rules (EE-158-86, 160-86), which was the subject of FR Doc. 88-17721 (53 FR 29719), is corrected as follows:

1. On page 29730, in the third column, in § 1.401(k)-1 (g) (8) (iii) (C), in the last line, "(g)(8)(ii)(A) and (B) of this section." should read "(g)(8)(i)(A) and (B) of this section."

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-24990 Filed 10-27-88; 8:45 am]

BILLING CODE 4830-01-M

31 CFR Part 103

Reopening of Comment Period on Bank Secrecy Act Regulations

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Treasury has received requests to extend the comment period on the Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos, published in the **Federal Register** on August 18, 1988, [53 FR 31370] (corections published August 24, 1988 (53 FR 32323)). Notice is hereby given that Treasury is reopening the comment period.

DATE: Comments will be accepted through November 14, 1988.

ADDRESS: Address written comments to: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Room 2000, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-2914.

Date: October 18, 1988.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 88-24937 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[GEN Docket No. 87-24; FCC 88-322]

Program Exclusivity Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Further Notice of Proposed Rule Making (Further Notice)* seeks additional comment and information regarding several rules concerning the ability of television stations to obtain exclusivity rights for the programs they broadcast. The initial *Notice of Proposed Rule Making (Notice)* (52 FR 15738, Apr. 30, 1987) in this proceeding addressed three rules: cable syndicated exclusivity, cable network non-duplication, and non-network territorial exclusivity. On May 18, 1988, the Commission adopted a *Report and Order* (53 FR 27167, July 19, 1988) which reinstituted syndicated exclusivity rules for cable television systems and extended the scope of the existing cable network non-duplication rules. With respect to the non-network territorial exclusivity rule, the Commission found that the submitted comments provided insufficient information on which to base a decision regarding the proposed elimination or modification of the rule. Accordingly, the Commission concluded that it was appropriate to retain the existing territorial exclusivity rule, with one modification to permit broadcasters to obtain such rights on a national basis, and to issue a further notice of proposed rule making to request additional information before deciding whether to change this rule. Furthermore, in the *Report and Order*, the Commission stated it would consider several refinements to the syndicated exclusivity and network non-duplication rules in the context of the further rule making proceedings.

DATES: Comments due December 12, 1988; and replies December 27, 1988

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission *Further Notice of Proposed Rule Making* adopted October 13, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Notice*, the Commission proposed to eliminate the non-network territorial exclusivity rule based on its initial assessment of three factors relating to this rule: 1) competitive market effects; 2) changes in the program supply market; and 3) practical concerns. The *Further Notice* provides a review of our initial analysis of this matter, summarizes comments submitted in response to the *Notice*, and requests additional information and discussion regarding the continued need for the non-network territorial exclusivity rule. In particular, additional information is requested concerning several points raised in the comments that were counter to the initial analysis: 1) that elimination of the rule would have an adverse effect on the production of syndicated programming; 2) that programming with high audience appeal remains scarce; and 3) that elimination of the rule would harm populations located in the portions of fringe market's service area that are not served by larger market stations. The *Further Notice* also requests comment regarding the possible modification of the geographic limits of the applicability of the rules, such as an increase in the specified mileage zone, in the event that it is retained.

2. The *Further Notice* also seeks comment on one provision of the network territorial exclusivity rule (Section 73.658(b)) not previously considered in this proceeding. We request that commenters consider the possible elimination or modification of the provision of this rule that prohibits television stations from entering into exclusivity agreements which prevent stations licensed to different communities from acquiring the rights to the same network program. This restriction on exclusivity arrangements is similar to those provided by the other rules under consideration in this proceeding and it appears appropriate to request comments regarding this rule in the *Further Notice*.

3. In the *Report and Order*, the Commission stated that it would consider changes in the geographic limits applicable to the new syndicated exclusivity rules and modified network non-duplication rule in the context of its further consideration of the non-network territorial exclusivity matter. Therein, the Commission also identified several new issues relating to program exclusivity that were not addressed in the *Notice*, including whether to modify these rules in order that they might apply uniformly to all types of television stations. Accordingly, the *Further Notice* requests comment on a proposal to adopt a consistent set of geographic limits for all program exclusivity rules for network and non-network programming carried by over-the-air television stations and cable systems. In addition, the *Further Notice* proposes to revise each of the program exclusivity rules such that all stations covered by the scope of our television rules, including commercial, non-commercial, low power television, and translator stations, are entitled to bargain for and exercise program exclusivity against other broadcast stations that may be available either over-the-air or through cable carriage.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permission *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will consider elimination or modification of the non-network territorial rule and changes to other program exclusivity rules in a manner that will balance our desire to maximize the flexibility of parties entering into exclusivity arrangements against our concern that small and fringe market stations have access to sufficient programming to serve the public. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 12, 1988, and reply comments on or before December 27, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

7. This *Further Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Parts 73 and 76

Television broadcasting and cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24868 filed 10-27-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232, 242, 245, and 252

Department of Defense Federal Acquisition Regulation Supplement; Contractor Material Management and Accounting Systems (MMAS)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: To implement section 834, Pub. L. 100–456, the Department of Defense is proposing the following changes to the DoD FAR Supplement. A new Subpart 245.72, Contractor Material Management and Accounting Systems, is added. Paragraph 232.503–15(d) is added to identify the conditions under which the ACO may grant blanket approval for material transfers between contracts. Paragraph 245.505–3(f) (2) (ii) is added to allow the contractor's material control system to physically commingle inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts so long as the contractor has adequate controls to ensure that the requirements of 245.7206 are not compromised. The clause at 252.245–7001 is added to incorporate the requirements of the new subpart into appropriate contracts. In addition, section 242.302, Contract Administration Functions is changed to incorporate the evaluation of contractor MMAS into the list of ACO responsibilities.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before December 27, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88–311 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Cdr. Benjamin R. Sellers, Office of Cost, Pricing And Finance, ODASD(P), Room 3C800, The Pentagon, Washington DC 20301–8000, Telephone (202) 695–7197.

SUPPLEMENTARY INFORMATION:

A. Background

Audit findings at a number of defense contractor locations disclosed the need for increased attention to material management and accounting systems (MMAS) and their compliance with current rules and regulations. As a result, on December 14, 1987 the Department of Defense published a notice of intent to develop a proposed rule regarding contractor MMAS's. On September 30, 1988, Section 834, Pub. L. 100–456 was enacted. This law requires the Secretary of Defense to prescribe regulations containing standards for inventory accounting systems within 30 days and appropriate certification and enforcement requirements within 180 days of enactment of the law. This proposed rule prescribes standards for inventory accounting systems and enforcement requirements. In the course of developing the proposed rule, the DAR Council carefully considered the question of contractor certification of inventory accounting systems. Recent controls and in-depth review procedures have been initiated regarding contractor estimating systems in addition to the procedures contained in this proposed rule regarding contractor material management and accounting systems. These new procedures, combined with (1) the Government's long-standing remedies under the cost accounting standards clause, defective pricing clause, and the progress payments clause, and (2) the existing certifications regarding current cost or pricing data, overhead charges, and cost vouchers/progress payment requests, provide adequate protection for the Government's interest such that further certification is not required.

B. Regulatory Flexibility Act

The Department of Defense certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Although the proposed rule applies to small businesses under certain circumstances, only large businesses meeting certain dollar thresholds are required to demonstrate the degree to which their material management and accounting systems conform to the standards contained in the proposed rule.

C. Paperwork Reduction Act

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq. A request for a Public Information Collection is being prepared for submission to OMB which estimates an increased burden of 1,687,000 hours for OMB control number 0704–0246.

List of Subjects in 48 CFR Parts 232, 242, 245, and 252

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232, 242, 245, and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 232, 242, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.503–15 is added to read as follows:

232.503–15 Application of Government title terms.

(d) The approval requirements of FAR 32.503–15(d) are met when the ACO has determined that the contractor's material management and accounting system conforms to the standard at 245.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.302 is amended by adding paragraph (S–76) to read as follows:

242.302 Contract administration functions.

* * * * *

(S–76) Evaluate contractor material management and accounting systems as prescribed in subpart 245.72.

PART 245—GOVERNMENT PROPERTY

4. Section 245.505–3 is added to read as follows:

245.505–3 Records of material.

(f)(2)(ii) For DoD contracts, the contractor's material control system may physically commingle inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts so long as the contractor has adequate controls to ensure that the

requirements of 245.7206 are not compromised.

5. A new Subpart 245.72, consisting of sections 245.7201 through 245.7209, is added to read as follows:

Subpart 245.72—Contractor Material Management and Accounting Systems

Sec.
245.7201 Scope of subpart.
245.7202 Definitions.
245.7203 Policy.
245.7204 Applicability.
245.7205 Responsibilities.
245.7206 Material management and accounting system standards.
245.7207 System disclosure, demonstration, and maintenance requirements.
245.7208 Procedures.
245.7209 Contract clause.

Subpart 245.72—Contractor Material Management and Accounting Systems

245.7201 Scope of subpart.

This subpart prescribes policies, procedures, and standards for use in the evaluation of contractors' material management and accounting systems (MMAS). It further prescribes the responsibilities of the contractor, the auditor, and the contracting officer regarding the assessment, demonstration, evaluation, and correction of deficiencies in a contractor's MMAS.

245.7202 Definitions.

"Contractor", for purposes of this subpart, means a business unit as defined in FAR 31.001.

"Material Management and Accounting System", (MMAS) as used in this subpart, means the contractor's system(s) for planning, controlling, and accounting for the acquisition, use, and disposition of material. MMAS's may be manual or automated and they may be integrated with planning, engineering, estimating, purchasing, inventory, and/or accounting systems, etc. or they may be essentially stand-alone systems.

"Valid Time-Phased Requirements" means material which is (i) needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc., and (ii) is charged/billed to contracts or other cost objectives in a manner consistent with their need to fulfill the production plan.

245.7203 Policy.

It is the policy of the Department of Defense that all contractors have a MMAS that accurately estimates material requirements, assures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements, and maintains a consistent, equitable, and unbiased logic for costing of material transactions.

245.7204 Applicability.

(a) All contractors who receive prime contracts, other than contracts awarded under the set-aside procedures of FAR Part 19, which contracts are greater than the small purchase threshold set forth in FAR 13.101 and which are either (1) cost reimbursement contracts, or (2) are fixed price contracts with progress or other financing payments are expected to have a MMAS which conforms to the standards at 245.7206.

(b) The specific requirements of sections 245.7207 and 245.7208 apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more.

(c) For a large business contractor not meeting the criteria in paragraph (b) of this section but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10 million or more, the PCO may require compliance with paragraphs (d) and (e) of the clause at 252.245–7001 with the concurrence, or at the request, of the ACO when such compliance is in the best interest of the Government (e.g., significant material management and accounting system deficiencies are believed to exist).

(d) The demonstration and evaluation requirements of sections 245.7207 and 245.7208 do not apply to small businesses, educational institutions, or nonprofit organizations.

245.7205 Responsibilities.

(a) Contractors shall assess their MMAS's and take reasonable action to comply with the standards at 245.7206.

(b) Contractors meeting the requirements in 245.7204 (b) or (c) shall disclose their MMAS to the cognizant ACO and shall, upon the request of the ACO, demonstrate the degree to which their MMAS complies with the standards at 245.7206, and shall present a comprehensive plan for correcting any significant deficiencies.

(c) The ACO will neither approve nor disapprove a contractor's MMAS, but only determine whether it adequately conforms to the standards set forth in 245.7206. However, the approval requirements of FAR 32.503–15(d)(5) are met when the ACO has determined that the MMAS conforms to the standard at 245.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

(d) For a contractor meeting the requirements in 245.7204 (b) or (c) above, the cognizant ACO shall determine the adequacy of the contractor's MMAS and pursue appropriate corrections of deficiencies.

(e) On behalf of the ACO, the cognizant auditor will advise and assist the ACO in evaluating both the contractor's MMAS and the contractor's correction of any deficiencies thereto. Auditors shall assess the significance of contractor deficiencies and provide the ACO an estimate of the adverse material impact to the Government resulting from such deficiency(s).

245.7206 Material management and accounting system standards.

(a) MMAS's must have adequate internal accounting and administrative controls to assure system and data integrity; and

(b) Comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions complaint with the FAR and DFARS.

(2) Assure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions. A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to assure that requirements are both valid and appropriately time-phased. If systems have accuracy levels below those above, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy levels, and/or (ii) the cost to meet the accuracy goals is excessive in relation to the impact on the Government.

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual overrides. Systems should identify operational exceptions such as excess/residual inventory as soon as known.

(4) Provide audit trails and maintain records necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired. Both manual records and those in machine readable form will be maintained for the prescribed record retention periods.

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95

percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy level, and/or (ii) the cost to meet the accuracy goal is excessive in relation to the impact on the Government.

(6) Provide details description(s) of circumstances which will result in manual or system generated transfers of parts.

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions. The contractor will maintain and disclose a written policy describing the transfer methodologies. The costing methodology may be standard or actual cost, or any of the inventory costing methods in FAR 30.411–50(b). Consistency must be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(i) The system should transfer parts and associated costs within the same billing period.

(ii) In the few circumstances where it may not be appropriate to transfer parts and associated costs within the same billing period, use of a "loan/payback" technique must be approved by the ACO. When the technique is used there must be controls to ensure that parts are paid back expeditiously; procedures and controls are in place to correct any overbilling that might occur; at a minimum, the borrowing contract and the date the part was borrowed are identified monthly; and the cost of the replacement part is charged to the borrowing contract.

(8) Where allocations from common inventory accounts are used, have controls in addition to the requirements of standards in (b)(2) and (7) above to ensure that:

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts;

(iii) Algorithms are maintained based on valid and current data.

(9) Notwithstanding FAR 45.505–3(f)(2)(ii), have adequate controls to ensure that physically commingled inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts do not compromise requirements of any of the above standards.

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

245.7207 System disclosure, demonstration, and maintenance requirements.

(a) A MMAS disclosure/demonstration is adequate when the contractor has provided the cognizant ACO:

(1) Documentation which accurately describes those policies, procedures, and practices that the contractor currently uses in its MMAS in sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's MMAS; and

(2) Sufficient evidence to demonstrate the degree of conformance of its MMAS to the standards at 245.7206, including a comprehensive plan for correcting any significant deficiencies.

(b) Significant changes to the MMAS must be disclosed to the cognizant ACO within 30 days of their implementation.

(c) If the contractor notifies the ACO and the auditor that disclosed information relative to its MMAS contains commercial or financial information which it regards as privileged and confidential, such information shall be protected and shall not be released outside the Government without the permission of the contractor. The contractor should place an appropriate legend on the face of the disclosed document at the time of submission.

245.7208 Procedures.

(a) *System Evaluation.* Cognizant audit and contract administration activities will jointly establish and manage programs for evaluating the MMAS's of contractors meeting the requirements of 245.7204(b) or (c). Evaluations will be based on the disclosure/demonstrations provided by the contractors. Evaluations and reports shall be accomplished as a contract audit and contract administration office team effort. Evaluations shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract audit and contract administration activities. A system evaluation shall be conducted at least every three years, except where the ACO, in consultation with the auditor, determines that past experience and a current vulnerability assessment of the contractor discloses low risk. If the ACO determines that the Government is subject to high risk, MMAS evaluations should be done more frequently. To the extent possible, the evaluation team leader should inform the contractor and the ACO of significant findings during the conduct of the evaluation. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) *Disposition of evaluation team findings*—(1) *Reporting of evaluation team findings.* The report shall address the evaluation team findings and recommendations. If there are significant MMAS deficiencies, the report shall provide an estimate of the adverse material impact to the Government resulting from those deficiencies and a recommendation as to the acceptability of the contractor's corrective action plan.

(2) *Field pricing reports.* When the report of an evaluation indicates that there is a significant MMAS deficiency, all field pricing reports for that contractor will contain a recommendation relating to proposed cost and pricing data adjustments necessary to protect the interest of the Government, until the deficiency(s) is corrected.

(3) *Initial notification of contractor.* Upon receipt of the system evaluation report, the ACO shall provide a copy to the contractor and allow 30 days, or a reasonable extension thereto, for submission of its written response. If no significant deficiencies are identified, the ACO will notify the contractor in a timely manner.

(i) *Contractor agreement.* If the contractor agrees with the report findings and recommendations the contractor should proceed with the execution of the corrective action plan.

(ii) *Contractor disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreeement.

(4) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's written response and determine whether——

(i) The MMAS contains deficiencies which need correction;

(ii) Any deficiencies are significant enough to result in the reduction or suspension of progress payments; and

(iii) Proposed corrective actions are adequate to correct the deficiencies.

(5) *Contracting officer responsibility.* (1) When the ACO determines that there is a significant MMAS deficiency, the ACO shall suspend, in accordance with FAR 32.503–6, an appropriate percentage of affected costs on progress payment claims and public vouchers proportionate to the adverse material impact to the Government until a corrective action plan is submitted and accepted. The percentage of the suspension will be impacted by the

quality of the contractor's self-assessment, demonstration, and corrective action plan. After acceptance of the corrective action plan, but prior to complete implementation, the ACO will reduce the suspension as appropriate to reflect the contractor's progress. In no case however, will total amounts of affected costs be approved for progress payments or public vouchers until the contractor's system is determined to be acceptable for Government contract costing purposes, or the amount of the impact is determined to be immaterial.

(ii) When the report of an evaluation indicates that there is a significant MMAS deficiency, the ACO should ensure that the effect of the deficiency(s) is considered in the review of the contractor's estimating system pursuant to DFARS 215.811.

(6) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and any decision to reduce or suspend progress payments. The notice shall identify the deficiencies requiring correction and will indicate acceptance or rejection of the contractor's corrective action plan.

(7) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take further appropriate action to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include, but are not limited to, bringing the issue to the attention of higher level management, further reduction or suspension of progress payments in accordance with FAR 32.503–6, disapproval of the contractor's cost accounting system and/or cost estimating system, and/or recommendations concerning award of future contracts.

245.7209 Contract clause.

The contracting officer shall insert the clause at 253.245–7001 in all solicitations and resulting contracts which are greater than the small purchase threshold set forth in FAR 13.101 and are either (a) cost reimbursement contracts or (b) are fixed-price contracts with progress or other financing payments. However, the clause shall not be included in that portion of solicitations and contracts which are set-aside for exclusive participation by small businesses and small disadvantaged business concerns.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.245–7001 is added to read as follows:

252.245–7001 Material management and accounting system requirements and standards.

As prescribed in 245.7209, insert the following clause.

Material Management and Accounting System Requirements and Standards (October 1988)

(a) *Definitions.*

"Contractor", for purposes of this clause, means a business unit as defined at FAR 31.001, i.e., any segment of an organization, or an entire business organization which is not divided into segments.

"Material Management and Accounting System", (MMAS) as used in this subpart, means the contractor's system(s) for planning, controlling and accounting for the acquisition, use, and disposition of material. MMAS's may be manual or automated and they may be integrated with planning, engineering, estimating, purchasing, inventory, and/or accounting systems, etc. or they may be essentially stand-alone systems.

"Valid Time-Phased Requirements" means material which is (1) needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc., and (2) is charged/billed to contracts or other cost objectives in a manner consistent with their need to fulfill the production plan.

(b) *General.* The contractor agrees to maintain a material management and accounting system (MMAS) that accurately estimates material requirements, assures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements, and maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(c) *Applicability.* The Contractor will assess its MMAS and take reasonable action to comply with the standards set forth in section 45.7206 of the DoD FAR Supplement. Paragraphs (d) and (e) below are also applicable if the Contractor is a large business and, in its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts totaling fifty million dollars ($50 million) or more. Paragraphs (d) and (e) below are also applicable if the Contractor is a large business which, in its fiscal year preceding award of this contract, received DoD prime contracts or subcontracts totaling ten million dollars ($10 million) or more and, during performance of this contract, the Contracting Officer notifies the Contractor in writing that paragraphs (d) and (e) of this clause apply.

(d) *System disclosure, demonstration, and maintenance requirements.* (1) The Contractor shall disclose its MMAS to the cognizant ACO and shall, upon the request of the ACO, demonstrate the degree to which its MMAS conforms to the standards set forth in section 245.7206 of the DoD FAR Supplement. If the contractor desires the Government to protect such information as privileged or confidential, an appropriate legend should be placed on the face of the document(s) at the time of submission. A MMAS disclosure/demonstration is adequate when the contractor has provided the cognizant ACO:

(i) Documentation which accurately describes those policies, procedures, and practices that the contractor currently uses in its MMAS in sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's MMAS; and

(ii) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at 245.7206 of the DoD FAR Supplement, including a comprehensive plan for correcting any significant deficiencies.

(2) Significant changes to the MMAS must be disclosed to the ACO within 30 days of their implementation.

(e) *MMAS deficiencies.* (1) If during the period of performance of this contract, the Contractor receives a report of the evaluation of its MMAS, the Contractor agrees to respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall, within thirty (30) days of receipt of such report, indicate its agreement in writing and shall proceed to execute the corrective action plan, if any, agreed-to by the ACO.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall respond in writing within thirty (30) days of receipt of the report, indicating its rationale for each area of disagreement.

(2) The ACO shall evaluate the Contractor's response to the report and notify the Contractor of his/her determination concerning any remaining deficiencies and/or the adequacy of any proposed or completed corrective action(s).

(End of clause)

[FR Doc. 88–25036 Filed 10–27–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 81020–8220]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed preliminary initial specifications for 1989 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1989 fishing year for Atlantic mackerel, squid, and butterfish. Regulations governing these

fisheries require the Secretary of Commerce (Secretary) to propose for pulbic comment preliminary initial specifications for the coming fishing year on or about November 1. This action provides information and requests comments for NOAA's determination of the initial specifications for the 1989 fishing year.

DATE: Comments must be received on or before November 28, 1988.

ADDRESS: Send comments to Kathi L. Rodrigues, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments—Annual Specifications".

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Macherel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, Mar. 27, 1986), as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the initial optimum yields (IOYs), as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found at §§ 655.21 and 655.22. The Secertary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. These specifications are based on reecommendations submitted by the Mid-Atlantic Fishery Management Council (Council), the lead Council for the FMP.

The Director, Northeast Region, NMFS (Regional Director) in consultation with the Council, has determined the total allowable biological catch (ABC), IOY, DAH, DAP, JVP and TALFF for each species. The analyses of the economic factors specified at § 655.21(b)(1)(i) and § 655.21(b)(2)(ii) for squid and Atlantic mackerel respectively, Council recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons (mt) for the maximum optimum yield (Max OY); ABC; OIY, which is the sum of DAH (DAP+JVP) and TALFF; for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. These initial specifications are the amounts that the Regional Director is proposing for the 1989 fishing year beginning January 1, 1989.

TABLE.—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1989 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1989.

[in metric tons (mt)]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max oy [a]	44,000	30,000	N/A[b]	16,000
ABC [c]	37,000	22,500	330,000	16,000
IOY	22,012	15,000	74,000	10,024
DAH	22,000	15,000	44,000 [d]	10,000
DAP	22,000	12,000	20,000	10,000
JVP	0	3,000	10,000	0
TALFF	12	0	30,000 [e]	24

[a] Maximum OYs as stated in the FMP.
[b] Not applicable; see the FMP.
[c] IOY can rise to this amount.
[d] Includes 14,000 mt projected recreational catch.
[e] For every 9 mt of TALFF, foreign partner is required to purchase 3 mt of JVP and 1 mt of U.S.-processed product. If U.S. product is unavailable, an additional 3 mt of JVP may be substituted.

The Regional Director has determined that the IOY levels proposed for the 1989 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. These levels were set to encourage continued growth in both the harvesting and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Fishery Conservation and Management Act. They were selected after meetings and discussions with the Concil, considering information from industry groups and foreign natioinal representatives, and review of the performance of U.S. fishermen, processors, projected domestic landings, stock assessments, and joint venture information.

Atlantic Squids

The maximum IOYs specified in the FMP are 44,000 mt for *Loligo* and 30,000 mt for *Illex*. Based on the most recent scientific information available, the Council has recommended setting ABCs for *Loligo* and *Illex* at the same levels set for 1986, 1987, and 1988. The proposed IOYs, presented in the above table, represent a modification of ABC based on the analysis of nine economic factors outlined in the FMP and contained in the regulations at § 655.21(b)(2)(ii).

Domestic landings of *Loligo* for 1988 are expected to be above 14,000 mt and are already the highest on record. Based on this domestic production, as well as the information provided from the processors' survey, the Council has projected an improvement for the 1989 fishing year, and has recommended setting DAH at 8,000 mt above the 1988 amount. The proposed *Loligo* IOY equals the proposed DAP plus a TALFF of 12 mt, an amount to accommodate *Loligo* squid incidentally caught in the Atlantic mackerel directed fishery. Based on the Council's projection that domestic processors have the capacity and intent to utilizie the entire amount expected to be harvested, the proposed *Loligo* JVP is zero.

The *Illex* IOY level proposed is based on the Council's statement indicating that the U.S. industry would benefit most from an IOY level that provides an amount for domestic processing similar to the previous year's amount. As a result, the Council has recommended that DAH be set at 15,000 mt. Based on the processors' reported capacity and intent to utilize approximately 10,000 mt in 1989, a DAP of 12,000 mt is proposed. With a DAP of 12,000 mt, the remaining 3,000 mt, which U.S. processors do not have the capacity and intent to process, is proposed for the JVP level. In his decision to adopt the Council's recommdations for *Illex*, the Regional Director has weighed the domestic harvesters' interest in participating in joint ventures against continued foreign involvement. The Regional Director concurs with the Council that the specifications, as proposed, would be in the best interest of the developing U.S. *Illex* fishery.

As in the previous fishing year, specifications give priority to domestic users. Squid IOYs, as recommended by the Council, are proposed at levels which provide squid TALFFs at bycatch levels only. The Council has recommended an *Illex* IOY which results in an *Illex* TALFF of zero, based upon it's recommendation that there be no foreign directed fishing for silver and red hake during 1989 and, therefore, there is no need for an *Illex* TALFF to provide for bycatch. The annual specifications for the hakes have not been completed at this time. Until specifications for hakes are determined, the Regional Director proposes to set the *Illex* IOY at a level which results initially in an *Illex* TALFF of zero. If a directed fishery for hakes by foreign nations is allowed during 1989, the appropriate bycatch, as specified in the FMP, will be added to the TALFFs.

Atlantic Mackerel

The proposed 1989 Atlantic mackerel ABC, calculated according to the formula at § 655.21(b)(2)(i), is 330,000 mt.

An Atlantic mackerel IOY is proposed at a level that allows for TALFF and JVP amounts of 30,000 mt and 10,000 mt. respectively. These amounts are considerably lower than previous amounts and reflect a commitment by the Council to take the necessary steps toward development of the U.S. industry.

The Council's recommendations on the mackerel IOY were made after reviewing the nine economic factors specified in the FMP and contained at § 655.21(b)(2)(ii), and after consideration of public testimony from industry members. The Council's policy for development of U.S. fisheries has been to stimulate growth and investment on the domestic side with a concurrent phasing-out of foreign participation. Maximum benefits have been provided to U.S. fishing interests by application of this policy to the *Loligo* squid and butterfish fisheries. The Council proposes to follow the same course in developing the Atlantic mackerel fishery.

In proposing the IOY level the Regional Director has taken into consideration economic and social factors which include market information, domestic processing capacity, investment in new equipment, etc. Indications are that sufficient expansion of U.S. harvesting and processing capacity has already occurred, both shoreside and at-sea processing capability, to achieve the IOY. In addition, new opportunities for U.S.-processed mackerel are opening in the world marketplace. Current world resource conditions appear favorable for expansion of markets for U.S.-processed mackerel. A relatively weak U.S. dollar will also serve to aid U.S. marketing efforts abroad. Based on consideration of all of the above, the Regional Director has determined that the specifications recommended by the Council will likely provide the maximum benefits to the overall U.S. industry.

The Council further recommended that the foreign allocations of TALFF be contingent upon purchase of 3 mt of Atlantic mackerel JVP and 1 mt of U.S. processed product for every 9 mt of TALFF. If U.S.-processed product is unavailable, a purchase of 3 mt of JVP will be considered the equivalent of 1 mt of processed product. The Regional Director proposes to adopt this measure as is reflected in footnote e to the table.

The Council has urged the Regional Director to limit the number of foreign permits to the number necessary to harvest the particular allocation and to distribute allocations in increments so as to ensure compliance with the purchase requirements.

The Council expressed concern over the incidental take of marine mammals associated with the mackerel fishery and has urged the Regional Director to do everything within his power to reduce impacts on marine mammals. The Regional Director shares the Council's concern for marine mammal protection and will support measures that can reasonably be expected to achieve that objective.

Butterfish

The Regional Director has reviewed the most recent biological data, including data on discards, pertaining to butterfish stocks, and he proposes no changes proposed to the butterfish specifications over the previous year with the exception of an adjustment to TALFF to provide for bycatch from the mackerel fishery. In accordance with the provisions of the FMP, a butterfish TALFF of 24 mt is proposed to provide for bycatch from the mackerel fishery.

The Councils' recommendations, and all public comments on the annual specifications, will be considered in the final decision. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** on or about December 15, 1988.

Classification

This action is authorized by 50 CFR Part 655 and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: October 21, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries National Marine Fisheries, Service.

[FR Doc. 88-24902 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of Spanish/English Certification Examination for Court Interpreters.

SUMMARY: The Director of the Administrative Office of the United States Courts announces that the agency will conduct the written portion of the certification examination for individuals who desire to be certified to serve as Spanish/English interpreters in courts of the United States in accordance with the Court Interpreters Act, Pub. L. No. 95–539, 92 Stat. 2040 (1978) (28 U.S.C. 1827). To sit for the examination, an individual must file a written application.

DATES: The agency will administer the written portion of the examination March 4, 1989, at 1:00 p.m. The deadline for filing of application is 4:00 p.m. on January 15, 1989. The oral portion will be administered in July/August 1989.

ADDRESSES: Mailed applications along with a $25 money order, cashier's check, or personal check payable to *University of Arizona Federal Court Project* are to be sent to: Federal Court Interpreters Certification Project, Modern Language Building, Room 456, University of Arizona, Tucson, Arizona 85721.

FOR FURTHER INFORMATION CONTACT: Dr. Roseann Gonzalez, University of Arizona, telephone (602) 621–3687 (Mountain Time).

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Administrative Office of the United States Courts (AOUSC) is responsible for the establishment of a program to facilitate the use of interpreters in courts of the United States. He must prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings and proceedings involving the hearing impaired (28 U.S.C. 1827(b)). Whenever an interpreter is required for a person in any criminal or civil action initiated by the United States, the presiding judicial officer must utilize the services of a certified interpreter, unless no certified interpreter is reasonably available.

The AOUSC will provide the courts with a roster of certified court interpreters selected on the basis of the successful completion of written and oral examinations in English and a foreign language.

II. This Examination

This examination will be a comprehensive written and oral examination for bilingual proficiency in Spanish and English, developed and administered under contract by the University of Arizona.

The written portion of the examination does not necessarily require the special knowledge of legal vocabulary. Each applicant who completes successfully the written portion will be eligible for the oral examination. Successful applicants will receive notice of the time and place of the oral portion of the examination.

The oral portion of the examination will test, in simulated settings, the applicant's ability to: (1) Interpret precisely from Spanish to English, in consecutive, simultaneous, and summary modes; (2) interpret from English to Spanish in consecutive, simultaneous, and summary modes; (3) perform sight interpretation. The oral portion of the examination does not necessarily require previous experience in court interpreting.

Testing Sites

Applicants may sit for the written examination at any of the locations identified below. Applicants must identify the city for taking both the written and oral portions. For 1989, oral examination sites are limited to Phoenix, AZ; Los Angeles and San Francisco, CA; Washington, DC; Miami, FL; Atlanta, GA; Chicago, IL; New Orleans, LA; Boston, MA; Albuquerque, NM; New York City, NY; San Juan, PR; Houston and San Antonio, TX.

Written Testing Sites

Alaska: Anchorage
Arizona: Phoenix, Tucson
California: Fresno, Los Angeles, Monterey, Sacramento, Sand Diego, San Francisco
Colorado: Denver
Connecticut: Hartford
District of Columbia
Florida: Miami, Orlando
Georgia: Atlanta
Hawaii: Honolulu
Illinois: Chicago
Louisiana: New Orleans
Massachusetts: Boston
Missouri: Kansas City
Nevada: Las Vegas, Reno
New Jersey: Newark, Trenton
New Mexico: Albuquerque, Las Cruces, Santa Fe
New York: Brooklyn, Manhattan
Ohio: Cincinnati
Puerto Rico: San Juan
Texas: Brownsville, Corpus Christi, Dallas, Houston, Laredo, San Antonio
Utah: Salt Lake City
Washington: Seattle

Filing

Written applications are preferred, but phone applications will be accepted if the fee is sent by January 15, 1989. If you do not have an application form, type or print the following information on 8½ × 11 paper:

1. Name
2. Mailing address, incl. zip code
3. Daytime telephone number
4. Evening telephone number
5. City for written examination
6. City for oral examination
7. Date of birth
8. Social Security Number
9. Special arrangements necessary because of physical disability or keeping of the Sabbath (explain)
10. I did/did not take the written and/or oral examination in 1987
11. I.D. number of exam (if known)
12. Enclosed money order/check number

Exam Procedures

You will receive an admission ticket to the exam shortly before the exam date. It will list the exact location of the exam. Present the admission ticket and a photo identification: driver's license, passport, work/student identification, etc. to be admitted to the exam.

III. Qualifications

There are no formal educational requirements for certification, either in languages or interpreting. However, the difficulty of the examination is at the college degree level of proficiency. Successful completion of the oral portion of the examination normally would require prior training or professional experience in simultaneous, consecutive, and summary interpreting.

IV. Duties

Successful completion of the examination will not necessarily lead to full-time employment. Interpreters satisfy most court needs as independent contractors. However, where full-time interpreters are needed, only certified interpreters will be eligible for appointment.

As the federal courts require full-time salaried interpreters, these interpreters will be chosen from the eligibility lists. The annual salary range is JSP–10 and JSP–12 ($25,226–$43,181) for full-time salaried interpreters. For certified interpreters who provide services as independent contractors, the fee is $210 per day.

Court interpreters perform all or some of the following duties: (1) interpret verbatim in simultaneous, consecutive, or summary mode a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) transcribe for electronic sound recordings; and (3) translate technical, medical, and legal documents and correspondence for introduction as evidence.

L. Ralph Mecham,

Director,

[FR Doc. 88–24912 Filed 10–27–88; 8:45 am]

BILLING CODE 2210–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Confinement Working Group

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Confinement Working Group will meet at the Congress Hotel, Plaza Room, 520 South Michigan Avenue, Chicago, Illinois, 60605 on November 11, 1988 from 1:00 p.m. to approximately 5:00 p.m. to discuss containment and confinement levels for agricultural research with animals.

This meeting is open to the public. Persons may participate in the meeting as time and space permit. The public may file written comments before or after the meeting with the contact person below.

Written comments may be sent to, and further information on the working group meeting may be obtained from, Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447–9165.

Date: October 12, 1988.

Robert W. Long,

Deputy Assistant Secretary, Science and Education.

[FR Doc. 88–24935 Filed 10–27–88; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting contingent upon timely reestablishment of the Committee:

Name: Federal Grain Inspection Service Advisory Committee.

Date: November 17, 1988.

Place: Baltimore-Washington International Airport Marriott, West Nursery Road, Baltimore, Maryland, 21240.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) OIG audit activity on protein, Cu-Sum, and standard reference method for corn moisture; (2) Subcommittee reports on the FGIS mission statement and in-transit grain quality; (3) updates on international monitoring and safety matters; (4) grain quality issues on such items as aflatoxin, shriveled and wrinkled soybeans, wheat classification, and soybean oil and protein; and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: October 21, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–24934 Filed 10–27–88; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Penny Ridge Fire Timber Salvage and Resource Recovery; Shasta-Trinity National Forests; CA

AGENCY: Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service USDA will prepare an environmental impact statement for the salvage of fire damaged timber and resource recovery work within an area affected by a wildland fire (Hermit Fire) that began on September 28, 1988. The proposed project is located on the Yolla Bolla Ranger District, Shasta-Trinity National Forests, approximately 12 miles south of the community of Wildwood in Trinity County, California. Most of the area is undeveloped and within the former Penney Ridge roadless area released for multiple-use purposes by the 1984 California Wilderness Act. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by December 3, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to: Acting District Ranger Jack Ratledge, Yolla Bolla Ranger District, Attn: Penny Ridge EIS, Platina, California 96076.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Ken Smith, EIS Team

Leader, Yolla Bolla Ranger District, Platina, California, 96076. Telephone (916) 352–4211.

SUPPLEMENTARY INFORMATION: This project proposes the development of a currently unroaded area that was identified during the RARE II (Roadless Area Review and Evaluation) analysis as the Penny Ridge areas. This area was released for multiple-use management by the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provide a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various levels, types, and locations of timber harvest and alternative locations and methods of access.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the EPA notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the above described areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Envionmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S.; 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by December 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the administrative review process.

Robert R. Tyrrel,

Forest Supervisor.

Date: October 21, 1988.

[FR Doc. 88–24967 Filed 10–27–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Reporting Requirement for Report of Commodities Returned After Temporary Export to Bloc Countries

Form Number: Agency—EAR 372.8(c)(2); OMB—0694–0030

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 100 respondents; 52 reporting/recordkeeping hours. Average hours per respondent is one-half hour.

Needs and Uses: Exporters are required to request an export license when commodities are being sent temporarily to a communist bloc country to display, demonstrate, or use for testing purposes. When such items are returned to the U.S., the exporter must file a report with Export Administration providing certain customs information. This information is used by BXA to ensure that temporarily exported commodities are not diverted to improper users.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88–24950 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration
Title: Disclosure of Shipment Which Should Have Been Made Under a Validated License
Form Number: Agency—N/A; OMB—0694–0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 20 respondents; 21 reporting/recordkeeping hours. Average hours per respondent is one hour.
Needs and Uses: Occasionally exporters discover that they have shipped a commodity out of the country without obtaining an export license. The Export Administration Act contains a provision to allow exporters to clear the record by submitting certain information on the shipment. Export Enforcement uses the information to investigate the matter. Depending on the severity of the violation, BXA decides whether or not to take legal action.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitutional Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88–24951 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration
Title: Unprocessed Western Red Cedar
Form Number: Agency—N/A; OMB—0694–0025
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 300 respondents; 150 reporting hours—Average hours per respondent is ½ hour.
Needs and Uses: This information is collected as supporting documentation for license applications to export western red cedar. The Export Administration Act prohibits the export of western red cedar from state or federal lands. The information provided is used to enforce this provision of the Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Micahals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88–24952 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration
Title: Petroleum (Crude Oil)
Form Number: Agency—None; OMB 0694–0027
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 25 respondents; 100 reporting hours—Average hours per response is 4.
Needs and Uses: This information is collected as supporting documentation for license applications to export petroleum (crude oil). It is used to make sure that the export would be in compliance with the five statutes that restrict the export of U.S. domestic crude oil. The statutes are: Minerals Leasing Act, Energy Policy and Conservation Act, Outer Continental Shelf Lands Act, Naval Petroleum Reserves Production Act, and the Export Administration Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Micahls, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC. 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88–24953 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 397]

Resolution and Order Approving the Application of the City of Flint, Michigan for a Special-Purpose Subzone in Midland, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign Trade Zones Board has

adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Flint, Michigan, grantee of Foreign-Trade Zone 140, filed with the Foreign-Trade Zones Board (the Board) on February 24, 1987, requesting special-purpose subzone status for the Terfenadine manufacturing facility (Bldg. 827) at the Dow Chemical Company plant in Midland, Michigan, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone in Midland, Michigan

WHEREAS, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

WHEREAS, the City of Flint, Michigan, grantee of Foreign-Trade Zone 140, has made application (filed February 24, 1987, FTZ Docket 2-87, 52 FR 8634) in due and proper form to the Board for authority to establish a special-purpose subzone at the Terfenadine manufacturiing plant of Dow Chemical Company, located in Midland, Michigan;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

WHEREAS, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

NOW THEREFORE, in accordance with the application filed February 24, 1987, the Board hereby authorizes the establishment of a subzone at the Terfenadine manufacturing plant of Dow Chemical Company in Midland, Michigan, designated on the records of the Board as Foreign-Trade Subzone No. 140B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC., this 20th day of October 1988, pursuant to Order of the Board.

Foreign-trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-24999 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-05-M

[Docket 34-88]

Foreign-Trade Zone 78—Nashville, TN; Extension of Time Limit for Subzones 78C and 78D Tennessee Valley Authority Equipment Storage Facilities Hartsville and Phipps Bend, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville-Davidson County Port Authority, grantee of FTZ 78, requesting an extension of the time limit on Subzones 78C (to 10-25-93) and 78D (to 12-31-89) at Tennessee Valley Authority's (TVA) nuclear equipment storage facilities in Hartsville and Phipps Bend, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 25, 1988.

Subzones 78C and 78D were approved by the Board on March 30, 1984, to allow TVA to defer duties on certain foreign-sourced nuclear power plant equipment purchased for power plants that were never built (Board Order 246, 49 FR 13562). The approval was requested and granted for five years (3-30-89), during which time TVA had expected to sell the equipment. TVA only recently found a purchaser in the Park Company, an Ohio general partnership, which plans to sell the equipment to a foreign buyer. As part of the sales transaction, TVA has entered into a related agreement with the Global Power Company, Inc., a Delaware Corp., (an affiliate of Park) regarding the leasing of the facilities on which the property in question is located. This will place Global in the position of subzone operator for purposes of the transaction. The transaction is contingent upon the continuation of subzone status. In the absence of this transaction, TVA planned to scrap the equipment in question.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., (Chairman), director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and, Colonel O'Brene Richardson, District Engineer, U.S. Army Engineer District Memphis, B-202, 167 N. Main, Memphis, Tennessee 38103-1894.

Comments concerning the proposed time extension are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 11, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office Suite 1114 Parkway Towers,

404 James Robertson Parkway, Nashville, TN 38103–1505.
Office of the Executive Secretary Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: October 26, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88–25115 Filed 10–27–88; 8:45 am]
BILLING CODE 3510–DS–M

International Trade Administration

[(C–351–802)]

Steel Wheels From Brazil; Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of steel wheels. The estimated net subsidy is zero for Borlem and 18.82 percent *ad valorem* for all other companies. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from all companies, except Borlem, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry equal to 18.82 percent *ad valorem*.

On the basis of new information submitted by the petitioner, we are initiating an investigation to determine whether manufacturers, producers, or exporters in Brazil of steel wheels receive benefits which constitute upstream subsidies within the meaning of the countervailing duty law. In accordance with section 703(g) of the Tariff Act of 1930, we may extend the deadline for a final determination to 165 days after the preliminary determination if we conclude that additional time is necessary to make the required determination concerning upstream subsidization. We conclude that such additional time is required. Accordingly, we will make our final determination no later than April 7, 1989.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTAL INFORMATION

Case History

On July 29, 1988, we received a petition in proper form from the Kelsey-Hayes Company on behalf of United States producers of steel wheels. In compliance with 19 CFR 355.26, the petition alleged that manufacturers, producers, or exporters in Brazil of steel wheels receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 18, 1988, we initiated such an investigation (53 FR 32267, August 24, 1988). We stated that we expected to issue a preliminary determination by October 24, 1988.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On September 12, 1988, the ITC preliminarily determined that there is a reasonable indication that imports of steel wheels materially injure, or threaten material injury to, a U.S. industry (53 FR 36660. September 21, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS). All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TUSUA item number(s) in all new petitions filed with the Department. A reference copy of the HTS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are steel wheels currently provided for in item 692.3230 of the TSUSA and currently classifiable under HTS item number 8708.70.80. The merchandise includes steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging form 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks, and other vehicles.

In a submission dated September 28, 1988, Borlem, S.A., a respondent company, argued that rims imported separately are not within the scope of the investigation. In submissions dated October 7, 1988 and October 12, 1988, the petitioner argued that rims imported separately and sold as "distinct articles of commerce" are not within the scope of the investigation, but that rims imported separately as a means of circumvention, are within the scope of the investigation. In a submission dated October 21, 1988, the petitioner, as well as NI Industries, a domestic interested party, argued that all rims, whether imported separately as a distinct article of commerce or not, are within the scope of the investigation.

We intend to examine these arguments, and any additional arguments submitted in this proceeding, in further detail. Until we have sufficient information to make a definitive scope ruling, we tentativley determine that rims or discs, imported separately, are included in the scope of this investigation.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidization (the review period) is calendar year 1987. During our investigation of steel wheels we received information showing that two companies, Rockwell-Fumagalli and

Borlem S.A., accounted for substantially all exports of steel wheels to the United States during the period of review.

I. Programs Preliminarily Determined to Confer Subsidies

(1) CACEX Preferential Working Capital Financing for Exports Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. During the period of review, Fumagalli made interest payments on CACEX loans, but Borlem did not use this program.

On August 31, 1984, Resolution 950 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution could pass on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a general tax on financial transactions). Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we preliminarily determine that it is countervailable.

We consider the benefits from loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the loan principal. We allocated the result over Fumagalli's total exports. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 2.25 percent *ad valorem* for Fumagalli and all other firms.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of steel wheels are eligible for an exemption from income tax on the portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we preliminarily determine that it is countervailable. Fumagalli used this program in 1987, but Borlem did not.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate. Because Fumagalli invested in the specified companies and funds, its effective tax rate was lower than the nominal 35 percent rate during the period of review.

We calculated Fumagalli's effective tax rate by dividing its net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective tax rate and allocating the result over Fumagalli's total exports. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 2.15 percent *ad valorem* for Fumagalli and all other firms.

(3) The IPI Export Credit Premium

Under this program, the Brazilian government pays exporters in cash a percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction. Exporters of steel wheels were eligible for the maximum IPI export credit premium, which was 15 percent during the period of review. Because this program provides payments that are limited to exporters, we preliminarily determine that it is countervailable. Fumagalli received the premium in 1987, but Borlem did not.

We calculated the benefit by dividing the amount of IPI credit premium earned on shipments of steel wheels to the United States by Fumagalli's exports to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 13.24 percent *ad valorem* for Fumagalli and all other firms.

(4) CIC–CREGE 14–11 Financing

Under its Circular CIC–CREGE 14–11, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. The interest rate is based on the cost of funds to banks plus a spread of three percentage points, which is below our benchmark rate (see below). The loans have a term of one year and a variable interest rate, which changes every quarter. Because this program provides loans at preferential rates only to exporters, we preliminarily determine that it is countervailable. Fumagalli made payments on a loan under this program during the period of review. The interest payments on this loan were made on the last day of each month, and the full principal was repaid at maturity. Borlem did not participate in this program during the review period.

The predominant short-term lending instrument commercially available in Brazil during the review period was a 60-day discount of accounts receivable. For our benchmark we used a yearly average of the annualized cost of these dicount rates, which are published weekly in *Gazeta Mercantil*, a Brazilian financial publication. In order to borrow a given amount for one year, a commercial borrower in Brazil would have been required to roll over a 60-day discount of accounts receivable ("duplicatas") five times. Each rollover would consist of discounting the original principal by the commercial discount rate prevailing on the day of the rollover. We have calculated an annual effective interest rate benchmark by multiplying the average monthly discount rate in 1987 by two to obtain a 60-day discount rate. We then converted the 60-day discount to an interest rate. Finally we compounded this rate six times to obtain an annual effective interest rate benchmark of 280.90 percent.

To measure the benefit, we compared the benchmark with the preferential rate and multiplied the differential by the full amount of the loan. We then divided the result by Fumagalli's exports to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 0.10 percent *ad valorem* for Fumagalli and all other firms.

(5) BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs ("BEFIEX") allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an increased IPI export credit premium, and tax exemptions or tax credits. Because these benefits are provided only to exporters, we preliminarily determine that this program is countervailable. Fumagalli received import duty reductions on capital equipment during the review period, but Borlem did not.

To calculate the benefit, we divided the amount of import duty reductions by Fumagalli's total exports in 1987. On this basis, we preliminarily determine the benefit to be zero for Borlem and 0.48 percent *ad valorem* for Fumagalli and all other firms.

(6) FINEX Export Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacaco (FINEX) to subsidize short- and long-term loans for both Brazilian exporters (Resolution 68) and foreign importers (Resolution 509) of Brazilian goods. CACEX pays the lending bank an "equalization fee" that makes up the difference between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal in order to encourage foreign bank participation in the program. During the period of review, the interest rates ranged between 5.25 percent and 8.19 percent per annum, which are below our benchmark rate (see below). Because this program provides loans at preferential rates only to exporters (or their foreign importers), we preliminarily determine that it is countervailable. We consider loans to U.S. importers to be equivalent to loans to their corresponding exporters. One of Fumagalli's importers made interest payments on Resolution 509 FINEX loans in 1987. Neither Borlem nor its importers used this program during the period of review.

Resolution 509 loans to U.S. importers are given in U.S. dollars. We therefore chose as a benchmark interest rate the average quarterly interest rate for commercial and industrial short-term dollar loans as published by the United States Federal Reserve Board. The average rate in 1987 was 9.81 percent per annum.

To measure the benefit, we multiplied the value of the loan principal on which interest payments were due in 1987 by the differential between the preferential interest rate and our benchmark. We divided the result by Fumagalli's exports of steel wheels to the United States in 1987. On this basis, we preliminarily determine the benefit to be zero for Borlem and 0.50 percent *ad valorem* for Fumagalli and all other firms.

II. Programs Preliminarily Determined Not to be Used

(We examined the following programs and preliminarily determine that producers or exporters of steel wheels did not use them during the review period:

(1) Accelerated depreciation for Brazilian-made capital goods;

(2) Duty-free treatment and tax exemption on equipment used in export production ("DCI");

(3) Financing for the storage of merchandise destined for export ("Resolution 330");

(4) Federal stock (EFG) loans; and

(5) Industrial enterprise (FST) loans.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of steel wheels from Brazil from all companies, except Borlem S.A., that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise from all companies, except Borlem S.A., of 18.82 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department's final affirmative determination, whichever is later.

Initiation of Upstream Subsidy Investigation

In our initiation notice (53 FR 32268, August 24, 1988), we declined to initiate as upstream subsidy investigation because the petitioner did not provide adequate information to support its allegation that a competitive benefit was conferred on steel wheels by means of subsidies provided to input (steel) producers. Under the terms of section 771A(b)(1),

"a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of the countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction."

On October 12, 1988, the petitioner provided published Brazilian prices for hot-rolled sheet. Comparing these prices with the petitioner's surrogate "arm's-length" prices, we conclude that there are reasonable grounds to believe or suspect that a competitive benefit is bestowed on Brazilian producers of steel wheels. The petitioner had already provided reasonable grounds to believe or suspect that a subsidy, as described in section 771(5)(B) of the Act, has been bestowed on the input product (hot-rolled sheet), and that the alleged upstream subsidy has a significant effect on the cost of manufacturing steel wheels. For these reasons, we are initiating an upstream subsidy investigation on steel wheels from Brazil.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination no later than March 3, 1989. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration within 10 days of the date of publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, at least 10 copies of pre-hearing briefs must be submitted to the Assistant Secretary by February 17, 1989.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, on or before November 28, 1988, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

October 24, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-24988 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Intent to Conduct a Public Hearing for the Nomination of Sites to Comprise the Virginia Estuarine Research Reserve

AGENCY: National Oceanic and Atmospheric Administration, National

Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to conduct a public hearing for the Virginia Estuarine Research Reserve.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972 as amended, the Commonwealth of Virginia intends to conduct a public hearing to discuss the proposed nomination of two sites as components in a Virginia Estuarine Research Reserve System.

Discussion

The Commonwealth of Virginia is studying the feasibility of establishing a National Estuarine Research Reserve System in the Virginia portion of the Chesapeake Bay and its tributaries. Research reserves will provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs will be designed to enhance basic scientific understanding of coastal environments and aid in resource management decisionmaking. Information derived from sponsored studies will provide a basis for measuring progress in Chesapeake Bay clean-up efforts and will be used to increase public awareness of coastal issues. The Virginia Institute of Marine Science (VIMS) has the lead role in developing and managing the reserve system.

Fifty (50) percent of the funding for establishing and managing the reserve system is provided by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act of 1972, as amended. Additional funds for research and education are provided by NOAA on a continuing, competitive basis for the life of the program. There are 17 research reserves nationwide, including one in Maryland.

VIMS has evaluated one hundred and thirteen (113) possible reserve sites, being assisted in this effort by a panel of the Commonwealth's leading coastal ecologists. Sites were evaluated on the basis of their representation of typical coastal ecosystems found in the Bay and its tributaries, ecological value, lack of disturbance, importance to research and environmental education, and the Commonwealth's ability to protect and manage the site so that research can occur in an undisturbed setting.

VIMS has completed its evaluation of proposed reserve sites on the York River and is seeking comments on the merits of the program from landowners, local officials, and state and federal officials. VIMS has scheduled a series of public meetings to inform the public about the reserve system and the sites proposed for nomination to NOAA.

A public meeting will be conducted on: Tuesday, November 15, 1988 at 7:00 p.m. in the van den Boogaard Center, 3510 King William Avenue and Route 30, West Point, Virginia. The proposed Taskinas Creek (James City County) and Sweet Hall Marsh (King William County) sites will be discussed at this hearing.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of VIMS, the Council on the Environment, and NOAA. Speakers will describe the importance of the proposed research programs to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed Chesapeake Bay National Estuarine Research Reserve in Virginia will be available at the public meetings or can be obtained in advance by contacting Ms. Carroll Curtis at the Virginia Institute of Marine Science, Gloucester Point, Virginia 23062 (804/624-7156). Persons wishing to make a presentation at the public meeting are encouraged to contact Ms. Curtis before November 15. Speakers are also asked to provide a written copy of their statement at the meeting. It is recommended that members of the public limit their presentations to 3-5 minutes in length.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves)

Date: October 25, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-25005 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

Emergency Striped Bass Research Study; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended anadromous Fish Conservation Act (Pub. L. 96-118).

DATE: The meeting will convene on Thursday, December 1, 1988, 10:00 a.m., and will adjourn at approximatley 3:00 p.m. The meeting is open to the public.

ADDRESS: Room 7000-A, Department of the Interior, C Street between 18th and 19th Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Telephone: (301) 427-2347.

Dated: October 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-24903 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, November 14-18, 1988, at the Sheraton Inn-Portland Airport, 8235 NE. Airport Way, Portland, OR, as follows:

Council—will convene November 16 at 8 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 9 a.m., the Council will convene its open session to consider groundfish management issues. Groundfish agenda items include, among others, a review of the 1988 fishery, management specifications and measures for 1989, joint venture net restrictions, limited entry and fishery management plan (FMP) Amendment #4.

There will be a public comment period on November 16 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On November 17 the Council will convene at 8 a.m., to address habitat allocation plans for 1989, administrative matters, and habitat issues. On November 18 the Council will convene at 8 a.m., to consider salmon management issues, including a review of the 1988 fisheries, a report from the Klamath Fishery Management Council, the FMP amendment for 1989, an experimental fishing permit application to allow dockside sorting of salmon, a "scoping" session for amending the FMP in 1990, and other matters.

Scientific and Statistical Committee (SSC)—will convene November 14 at 8 a.m., to address issues on the Council

agenda, will reconvene November 15 at 8 a.m., and on November 16 if necessary.

Groundfish Select Group (GSG)—will convene November 14 at 1 p.m., to develop recommendations for 1989 groundfish management measures, and will reconvene November 15 at 8 a.m.

Groundfish Advisory Subpanel—will convene November 14 at 1 p.m., or at the conclusion of the GSG public meeting to address groundfish matters on the Council agenda.

Habitat Committee—will convene November 15 at 1 p.m., to consider relevant and timely habitat issues for fisheries under Council jurisdiction.

Halibut Select Group—will convene November 16 at 5 p.m., to develop recommendations to the Council on management of the non-Indian halibut fisheries in 1989.

Enforcement Consultants—will convene November 15 at 1 p.m., to address issues on the Council agenda relating to enforcement and will reconvene November 16 at 8 a.m.

Budget Committee—will convene November 16 at 5 p.m., to review 1988 and 1989 funding for Council operations.

Salmon Select Group—will convene November 17 at 8 a.m., to conduct its annual review of estimation procedures used in salmon management. *Salmon Advisory Subpanel (SAS)*—will convene November 17 at 1 p.m., to consider salmon issues on the Council agenda.

Salmon Technical Team—see SAS agenda item.

Detailed agendas for the above meetings will be available to the public after October 21. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–25019 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

October 21, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virgina 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7–159,915—Biocontrol of Grey-Mold in Pome Fruits Using Acremonium breve.

SN 7–226,808—Methods for Inhibiting Rust Infections of Plants.

SN 7–229,386—Encapsulated Calcium Carbide as a Nitrification Inhibitor.

SN 7–229,877—Shaking Mechanism for Fruit Harvesting.

Department of Commerce

SN 6–851,607 (4,772,524)—Fibrous Monolithic Ceramic and Method for Production.

SN 6–897,227 (4,772,745)—Polymer-Reactive Photosensitive Anthracenes.

SN 7–015,577 (4,771,022)—High Pressure Process for Producing Transformation Toughened Ceramics.

SN 7–065,530 (4,772,370)—Process for Producing Icosahedral Materials.

Department of Health and Human Services

SN 6–894,251 (4,769,756)—Systematic Method for Matching Existing Radiographic Projections with Radiographs to be Produced From a Specified Region of Interest in Cancellous Bone.

SN 7–017,701 (4,772,632)—Antineoplastic, System-L Specific Amino Acid Nitrogen Mustards.

Department of the Air Force

SN 7–007,212—Substrate Handling System.

SN 7–175,972—Nickel Gradient Electrode.

SN 7–229,590—Smart Controller

Department of the Army

SN 6–898,576 (4,758,387)—Disposal of Solid Propellants.

SN 7–184,930—Insensitive High Energy Explosive Compositions.

SN 7–189,459—Light Weight Non-Saturating Spaced Core Inductor.

SN 7–234,069—Method of Making a Multidimensional Quantum-Well Array.

Department of the Interior

SN 6–877,890 (4,772,391)—Composite Membrane for Reverse Osmosis.

Tennessee Valley Authority

SN 7–044,919 (4,757,263)—Insulation Power Factor Alarm Monitor.

SN 7–073,619 (4,760,784)—Compacting Plate Locking Device Used For Packaging Expansible Material.

[FR Doc. 88–24992 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–04–M

Patent and Trademarks Advisory Committee

Advisory Committee for Patents and Trademarks; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

SUMMARY: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

Time and Place: December 2, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Confrerence Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

Agenda:

(1) Independent Government Corporations.

(2) Interrelationship of the PTO and ACPAT.

Public Observation: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTRACT: E. R. Kazenske, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557–3071.

Date: October 24, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–24997 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 2 and August 12, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 30459 and 34140) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926). No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1988:

Commodity

Side Rack, Vehicle, 2510–00–860–0523

Service

Commissary Shelf Stocking and Custodial Service, Fort Monmouth, New Jersey

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–24968 Filed 10–27–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Former Camp Elliott, San Diego, CA

Background

Pursuant to Council on Environmental Quality Regulations implementing the National Environmental Policy Act (NEPA), this document records the remedial action decision for the unexploded ordnance and related debris contamination caused by previous DOD-related activities on a portion of the Former Camp Elliott Training Range. A Feasibility Study of Remedial Action Alternatives and an Environmental Impact Statement have been prepared for the site. Camp Elliott Reservation operated as a tank, anti-tank, and artillery training/practice range during the World War II-Korean War era. A portion of the Former Camp Elliott Reservation now encompasses Tierrasanta was declared surplus property and transferred to developers in 1968. The community currently comprises over 6,000 residential units plus ancillary office, commercial and public service facilities. The project area includes 1897 acres of remaining open space in the Tierrasanta community. To facilitate comparison and analysis of alternatives, the open space within the project area was divided into sub-areas A, B, C, E, and F.

Decision

During the conduct of the study, it became apparent that no single alternative was appropriate for the entire project area. Therefore, the recommended plan or preferred alternative consists of a combination of alternatives for the various sub-areas. Based on the findings and conclusions of the Feasibility Study, Environmental Impact Statement, and associated correspondence received in response to coordination of this document I have decided that the plan as recommended below be conducted.

Sub-Area A: The plan for this area involves reacquisition and fencing by the U.S. Government of the 167 acres adjacent to the Naval Air Station Miramar, North of the project area. The reacquisition will be accomplished pursuant to a non-CERCLA authority.

Sub-Area B: The plan for this area, which encompasses 85 acres, involves fencing along the southern right-of-way line of the proposed State Route 52. Fencing would occur once the California Department of Transportation (CALTRANS) has obtained legal right-of-way. This will effectively isolate both Sub-Areas A and B from the rest of Tierrasanta to the South.

Sub-Area C: The plan for this area (Tierrasanta Norte residential development, approximately 358 acres) involves ordnance clearance sweeps using electromagnetic ordnance locators, after selective manual removal of vegetation, in areas to remain as permanent open space (approximately 75 acres), and ordnance clearance sweeps using electromagnetic ordnance locators in the remaining undeveloped area disturbed by the developer.

Sub-Area D: The plan for this area (Regency Hill residential development, 58 acres) involves an ordnance clearance sweep, using electromagnetic ordnance locators, of approximately 23 acres which surround the developing area and form the faces for the mesa, and no action in the remaining area disturbed by the development.

Sub-Area E: The plan for this area (approximately 454 acres located along the eastern project boundary) involves 209 acres, presently U.S. Navy owned, and is not eligible for funding under the DERP formerly used sites program, and 245 acres where 3 separate actions are planned. The plan for the 245 acres is as follows: approximately 56 acres, previously burned, involves ordnance clearance using electromagnetic ordnance locators; 129 acres involves ordnance clearance using electromagnetic ordnance locators after selective manual removal of vegetation; and 60 acres involves ordnance clearance sweeps using electromagnetic ordnance locators and controlled burning for vegetation removal.

Sub-Area F: The plan for this area (approximately 774 acres of remaining open space in canyons adjacent to developed residential or commercial areas) involves ordnance clearance using electromagnetic ordnance locators after selective removal of brush by manual cutting and removal. This area will be given first priority for implementation.

Other Action

In addition to the plan identified above, a follow-up ordnance test sweep will be conducted one year after the

initial clearance effort to monitor and/or verify the clearance effectiveness. Follow-up ordnance sweeps will be conducted based on the results of the one year follow-up test sweep efforts. Also efforts will be made to expand educational programs on unexploded ordnance within the community.

Alternatives Considered

In arriving at the decision to implement the various preferred remedial actions, several alternatives were considered. They were as follows: (1) Ordnance clearance using electromagnetic ordnance locators after selective manual removal of vegetation, (2) Ordnance clearance using electromagnetic ordnance locators after prescribed burning, (3) Limitation of certain types of development and/or placement of additional development restrictions, (4) Visual sweeps in conjunction with sub-surface electromagnetic detection, where possible without vegetation removal, (5) Restriction of access through signs and fencing, (6) Reacquisition of property by the Government, and (7) No action.

Each alternative was evaluated for each sub-area based on the following parameters: public safety, economic feasibility, technical feasibility, environmental issues, local public opinion, and Federal, State, and local restrictions. Environmental issues included biological resources, cultural resources, land-use, esthetics, air quality, water quality/erosion, recreation, socioeconomics, safety, and construction impacts. Alternatives that were considered to be environmentally preferable are alternatives listed in items 3, 4, 5, 6, and 7 above.

Based on the primary objective of the project (to product public health, safety, and general welfare) and the alternatives analyses, the preferred alternatives listed in items 1 and 2 above are recommended for most sub-areas. Even though these alternatives were the more costly and presented significant, but short term, adverse impacts to the vegetation and wildlife, it was not technically feasible to effectively locate and remove ordnance items from the areas without the associated short term impacts.

Mitigation

All practicable means to avoid or minimize environmental harm from the selected alternatives have been adopted. A preliminary cutting plan which minimizes impacts to vegetation has been developed. Prior to implementation, a comprehensive cutting plan will be prepared to assure that all feasible measures to minimize environmental impacts are incorporated into the project. A preliminary prescribed burn plan, considering fire intensity, frequency, duration, species composition, size, pattern, season, extent, weather, fuel, soil and site of the burn, and which minimizes impacts to vegetation, has been developed. Prior to implementation, a comprehensive burn plan will be prepared to assure that all feasible measures to minimize impacts are incorporated into the project.

Vernal pools which may contain the Federally endangered San Diego mesa mint will be avoided in any fence construction or prescribed burn activity. Prior to the unlikely event that vernal pool complexes containing the mesa mint need to be manually cleared of vegetation, coordination with the USFWS pursuant to the Endangered Species Act will be undertaken. Coordination with the USFWS will be conducted regarding those vernal pools containing mesa mint and ordnance contamination.

Every effort will be made to preserve the sensitive southern oak woodland, sycamores, and scrub oaks. All willow and post oak woodlands will be flagged by a biologist during project implementation. Precautions to keep these areas in an undisturbed condition will be taken. A qualified biologist will be on-site during project implementation to minimize adverse impacts on biological resources and and to enforce the environmental mitigation commitments of the project.

Vehicle access within the project area will be limited to existing paved and dirt roads and foot paths. Cultural resource sites were found in Sub-areas A, B, and E. No impact from construction will occur in sub-areas A and B. A qualified archeologist will be present during project implementation in sub-area E to assure that significant impacts to the site are avoided.

Public Involvement

A thorough public involvement program has been conducted throughout the site evaluation process. Public concerns, such as safety, socioeconomic and environmental effects have all been carefully considered.

Environmental compliance

The environmental documentation has been prepared in accordance with NEPA. The project has appropriately considered all applicable environmental laws, executive orders, and other policies as required.

Authority

My decision as detailed above has been carefully made in consideration of environmental impacts and other essential parameters as described. The goals of the Defense Environmental Restoration Program for formerly used sites, public safety, fiscal responsibility, and environmental protection are best served by selection of the preferred alternatives presented in this document.

Date: August 19, 1988.

William H. Parker, III,

Deputy Assistant Secretary of Defense, (Environment).

[FR Doc. 88-25010 Filed 10-27-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command, DoD.

ACTION: Invitation to comment on procedural change on notification of incidents of major significance.

SUMMARY: DOD 4500.34R, Appendix A, paragraph 32 states that incidents of major significance will be reported to the destination PPSO, origin PPSO, and the appropriate area command and/or field office. However, if the incident occurred enroute to destination, there is no requirement to notify the PPSO responsibile for the area where the incident occurred and who is responsible for many of the actions required in connection with the incident.

Therefore, it is proposed to add the following underlined requirement to DOD 4500.34R, Appendix A, paragraph 32:

32. *Strikes, Port Congestion, Fires, Pilferage, Vandalism, and Similar Incidents.*

a. In the event of incidents of major significance which produce significant loss, damage or delay resulting from strikes, port congestion, fires, pilferage, vandalism, and similar incidents, I will notify the destination *PPSO* and the appropriate MTMC area command and/or field office by electrical transmission (TWX or TELEX) of the incident not later than the first working day upon discovery. *"If the incident occurred en route to final destination, I will notify the PPSO responsible for the area where the incident occurred in addition to the destination PPSO".* A copy of the electrical transmission will also be promptly mailed to the origin *PPSO.* In addition, I will provide the following information within 5 working days after the incident or discovery thereof, by electrical transmission (TWX or TELEX)

or mailgram to *the appropriate MTMC area command and/or field office,* with a copy to the *HQMTMC, ATTN: MT–PP, Falls Church, VA 22041–5050,* the origin and destination *PPSO and when applicable, the PPSO responsible for the area where incident occurred.*

(1) Type of incident.

(2) Location of incident.

(3) Last name, first name, MI, grade, service, and SSN of member.

(4) PPGBL number and date issued.

(5) Code of Service.

(6) Origin ITO.

(7) Destination ITO.

DATE: Submit written comments by 25 Nov 88 to: Headquarters Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–PPQ–O, Falls Church, VA 22041–5050.

Kenneth L. Denton,

Department of the Army Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–24996 Filed 10–27–88; 8:45 am]

BILLING CODE 1310–08–M

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy

Dates of Meeting: 5–7 December 1988

Place of Meeting: West Point, New York

Start Time of Meeting: 9:00 a.m., 5 December 1988

Proposed agenda: Briefings on: Future Facilities Planning; Expansion of the Hotel Thayer; Attitudes of USMA Graduates and Officers from Other Sources of Commissioning; and Adequacy of Levels of Capital Investment at USMA. The Board will also receive updates on the following: 2002 Strategic Planning; Fellowship in Leader Development; Institute of American Leadership; Integration of Women in USCC; and Federal Assessment of Lands for the Highland Falls School District.

All proceedings are open. For further information, contact Lieutenant Colonel Morgan Roseborough, United States Military Academy, West Point, NY 10996–5000, (914) 938–3301.

For the Chairman of the Board of Visitors:

Morgan G. Roseborough, Jr.,

LTC, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 88–24989 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Engineers Corps

Open Meeting; Coastal Engineering Research Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meetings.

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meetings: November 15–17, 1988.

Place: Sheraton Beach Inn, Virginia Beach, Virginia.

Time: 8:30 a.m. to 5:00 p.m. on November 15; 8:30 a.m. to 5:00 p.m. on November 16; 8:00 a.m. to 12:00 noon on November 17.

Theme: Long-Range Research Needs in Coastal Engineering.

Proposed Agenda: The morning session on November 15 will consist of a review of CERB business, presentations and discussions on Coastal Issues and Needs in the Commonwealth of Virginia; Virginia Public Beach Board/Summary of Virginia Coastal Needs and the Use of section 933 Authority for Beach Nourishment; and Review of Federal Coastal Projects in Virginia.

The afternoon of November 15 will be devoted to a bus trip and tour of Virginia Beach, Rudee Inlet, Fort Story, and Lynnhaven Inlet.

The session on November 16 will consist of several presentations entitled: Long-Range Outlook for Coastal Engineering in the Corps; an Introduction and Review of Coastal R&D Program; Future Directions in Coastal R&D; Structure Design Criteria; Instrumentation (National Research Council Study); Facilities; and Report on the Workshop for Practicing Coastal Engineers. The session will also consist of two panel discussions. One panel will discuss Hydrodynamics (waves, currents, wave/structure interaction, storm surge, tidal circulation, etc.), and the other panel will discuss Sediment Transport (longshore, navigation channel shoaling, erosion, beach fills, etc.).

On November 17 there will be a presentation on the National Science Foundation, Science and Technology Centers. Recommendations by members of the Board will also be presented.

This meeting is open to the public; participation by the public is scheduled for 9:15 a.m. on November 17.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or on or before November 28, 1988.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39181–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers Executive Secretary.

[FR Doc. 88–25028 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO), Executive Panel Advisory Committee Latin America Task Force will meet November 28–29, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205

Date: October 24, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25021 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on November 16–17, 1988. The meeting will be held at the General Electric Company, 2361, Jefferson Davis Highway, Arlington Virginia. The meeting will commence at 1:00 P.M. and terminate at 6:00 P.M. on November 16; and commence at 8:00 A.M. and terminate at 5:00 P.M. on November 17, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on Navy computer needs, submarine combat systems, government computer standards, commercial computer standards and Congressional guidance. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Officer of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000; Telephone Number: (202) 696–4870.

Date: October 25, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25022 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on November 21–22, 1988. The meeting will be held at the Naval Coastal Systems Center, Panama City, Florida. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on November 21; and commence at 8:00 A.M. and terminate at 4:00 P.M. on November 22, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on detection and reporting, fielded and developmental systems, vulnerabilities, and program plans and funding. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000; Telephone Number: (202) 696–4870.

Date: October 25, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25023 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education.

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of the meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

DATES: November 14, 1988, 1:00 to 2:30 p.m. for the NACIE Executive Committee (Closed Meeting); 2:45 to 4:15 p.m. for Communications and Legislative Committee Meetings (Open Meeting).

November 15, 1988, 8:00 a.m. until the conclusion of business for the full NACIE Council Meeting (Open Meeting).

November 16, 1988, 8:30 a.m. until approximately 4:00 p.m. for the full NACIE Council Meeting (Closed Meeting) and from 4:00 p.m.–4:30 p.m. (Meeting).

ADDRESS: Doubletree Downtown Tulsa Hotel, 616 West Seventh Street, Tulsa, OK 74127, (918/587–8000) (November 14, 1988, Open Meeting) Tulsa Convention Center, 100 Civic Center Street, Tulsa, OK 74127 (918/592–7177) (November 15–16, 1988, Meetings).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202–7556 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

On Monday, November 14, 1988, the closed meeting of the NACIE Executive Committee will start at 1:00 p.m., and will end approximately 2:30 p.m. The agenda will consist of preparations for confidential information of recommended candidates for NACIE's permanent Executive Director position to the full Council. The open meeting will start at 2:45 p.m. and end at approximately 4:15 p.m. for the Communications and Legislative Committees reports.

On Tuesday, November 15, 1988, starting at 8:00 a.m. until the conclusion of business, the full Council meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.

(2) Acting Executive Director's Report.

(3) Action on previous minutes.

(4) Scholl Quality Control and Tribal Relations Committee Reports.

(5) NACIE Philosophy/Goals/Objectives.

(6) NACIE Handbook Update.

(7) NACIE By-Laws Update.

(8) NACIE Budget for FY'89.

(9) FY'89 Calendar for NACIE.

(10) Other NACIE Business.

On Wednesday, November 16, 1988, the full Council meeting will be closed to the public, beginning at 8:30 a.m. until approximately 4:00 p.m. to interview final candidates for the permanent, NACIE Executive Director, Council will discusss personnel matters that will involve confidential information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The Executive Committee and full Council sessions will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. Appendix 2) and under exemption (6) of Section 55b (c) of the Government in the Sunshine Act (Pub. L. 94-049; 5 U.S.C. 552b (c)(6). At approximately 4:00 to 4:30 p.m. on November 16, the Council will resume the open meeting to elect officers.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b shall will be available to the public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202-7556 (202-732-1353).

Dated: October 25, 1988.

Signed at Washington, DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-25000 Filed 10-27-88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.197]

Notice Inviting Applications for New Awards for Fiscal Years 1989 Under the College Library Technology and Cooperation Grants Program

Purpose: To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking and to improve the library and information services provided to them by public and nonprofit private organizations as well as to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

Deadline for Transmittal of Applications: January 13, 1989.

Deadline for Intergovernmental review Comments: March 14, 1989.

Applications Available: November 8, 1988.

Available Funds: $3,651,000.

Estimated Range of Awards: $15,000-$125,000.

Estimated Average Size of Awards: Networking Grant—$30,000, Combination Grant—$125,000, Services to Institutions Grant—$25,000, Research and Demonstration Grant—$100,000.

Estimated Number of Awards: Networking Grant—28, Combination Grant—15, Services to Institutions Grant—5, Research and Demonstration Grant—8.

Project Period: 12-36 months.

The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Adminstrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Non-profit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities); (b) The regulations as published in the Federal Register at 53 FR 27114, to be codified in 34 CFR Part 779.

For Application or Information Contact: Frank A. Stevens, Director, or Linda Loeb, Program Officer, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208-5571. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Dated: October 24, 1988.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-24939 Filed 10-27-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-263, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, November 17, 1988, 8:00-5:00 p.m., Friday, November 18, 1988, 8:00 a.m.-12:00 noon.

Place: Hyatt Regency Crystal City, Fairfax Room 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A061, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: 202-586-8290.

Purpose of the Board

The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Cognress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, November 17, 1988

- Program status report
- State program status reports by individual Board members
- Public comment (10 minute rule)

Friday, November 18, 1988

- Discussion of Issues for Board's Tenth Annual Report
- Public comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-586-8290. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m. Monday thru Friday, except Federal Holidays.

Issued at Washington, DC, on October 24, 1988.

J. Robert Franklin,

Advisory Committee Management Officer.

[FR Doc. 88-25002 Filed 10-27-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 89-01; Certification Notice—26]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V, 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Greenleaf Unit Two Associates, Inc., Radnor, PA	10-14-88	Cogen Topping Cycle.	49	Yuba City, CA.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on October 25, 1988.

Anthony J. Como,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25003 Filed 10-27-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-14-000 et al.]

Tucson Electric Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER89-14-000]

Take notice that on October 17, 1988, Tucson Electric Power Company (Tucson) tendered for filing an Economy Energy Agreement (Agreement) between Tucson and the Metropolitan Water District of Southern California. The primary purpose of the Agreement is to establish the terms and conditions for the supplying of economy energy between Tucson and the Metropolitan Water District of Southern California. Tucson states that services may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

Tucson requests an effective date of September 16, 1988, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon the Metropolitan Water District of Southern California.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Bangor Hydro-Electric Company, New England Power Company

[Docket No. ER89-12-000]

Take notice that on October 17, 1988, Bangor Hydro-Electric Company (Bangor) and New England Power Company (New England) tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to New England of 20,000 KW of electric generating capability during November 1, 1988 through October 31, 1989 and the total output associated therewith.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER89-11-000]

Take notice that on October 17, 1988, Minnesota Power & Light Company tendered for filing a Participation Power Transaction Agreement between Minnesota Power & Light Company and Northern States Power Company. Under this Agreement, Minnesota Power & Light Company will sell participation power as available from its Syl Laskin steam electric station Unit No. 2 to Northern States Power Company on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1988 through October 31, 1988 inclusive. The parties request a waiver of the Commission's 60 day filing period for this Agreement and a retroactive effective date of May 1, 1988 for such Agreement.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Company

[Docket No. ER89-13-000]

Take notice that on October 17, 1988, Central Hudson Gas & Electric Company (Central Hudson) tendered for filing, as a rate schedule an executed Agreement dated June 1, 1988 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for transmission of Capacity and Energy by Central Hudson for O&R between Central Hudson's 69 Kv. transmission interconnection with New York State Electric & Gas Corporation's (NYSE&G) West Woodbourne Substation and Central Hudson's 115 Kv. interconnection with O&R at O&R's Sugarloaf Substation.

The rate schedule provides for a monthly transmission charge of $1.00 per megawatthour of Energy received from NYSE&G for O&R's account at NYSE&G's West Woodbourne Substation for delivery to O&R's Sugarloaf Substation and $1.00 per

megawatthour of purchased service tariff 3(ST-3) received from New York Power Authority's (NYPA) Blenheim-Gilboa Pumped Storage Hydroelectric Plant. In addition O&R shall pay CHG&E $24 per megawatt-day for scheduled delivery of firm capacity.

Central Hudson states that copies of the subject filing were served upon Orange and Rockland Utilities, Inc.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24972 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-9-000 et al.]

Tennesee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

October 24, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-9-000]

Take notice that on October 4, 1988, Tennesee Gas Pipeline Company (Tennesee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-9-000 a request, pursuant to § 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation for Tejas Power Corporation (Tejas), a marketer, under Tennesee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to a maximum daily quantity (MDQ) of 30,000 dekatherms, for Tejas from receipt points located offshore Louisiana, offshore Texas, and the states of Texas, Louisiana, and Mississippi. The point of delivery and the ultimate delivery point are located in Pennsylvania, it is asserted.

Tennesee also indicates that transportation service for Tejas initially started September 1, 1988, as reported in Docket No. ST88-5836, pursuant to the self-implementing provision of Section 284.223 of the Regulations.

Further, Tennessee states that would transport approximately 30,000 dekatherms on a peak day, 4,000 dekatherms on an average day and 1,460,000 dekatherms on an annual basis.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natual Gas Company

[Docket No. CP89-32-000]

Take notice that on October 7, 1988, Southern Natural Gas Compnay (Southern), P.O. Box 2573, Birmingham, Alabama 35202-2563 filed in Docket No. CP89-32-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing firm transportation services for some of Southern's customers and the construction, installation and operation of compression and metering facilities necessary to render the transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it is authorized to sell gas for resale to Austell Natural Gas System (Austell), the City of Cartersville, Georgia (Cartersville), Marshall County Gas District (Marshall), the City of Pleasant Grove, Alabama (Pleasant Gove), South Georgia Natual Gas Company (South Georgia), and to the City of Wrens, Georgia (Wrens). Southern further states that it has signed precedent agreements with each of these customers to provide them with firm transportation service and, correspondingly, to increase each customer's total firm entitlements on Southern's system based on the transportation demand requested by each customer in the precedent agreement. It is explained that the sum of the requested transportation services (and hence, the increase in Southern's firm obligation) totals 13,279 Mcf per day. The maximum daily transportation volume requested by each customer is listed in the Appendix. Southern states that it would sign service agreements with each of the customers to provide the requested firm transportation pursuant to its Rate Schedule FT.

In order to render the proposed tranportation service, Southern requests authority to construct a new compressor station on its North Main Line at Mile Post 352.5 in St. Clair County, Alabama. Southern indicates that the proposed station would include one 4,390 horsepower turbine compressor. Southern also requests authority to modify and enlarge its existing Austell No. 2 and Marshall No. 1 meter stations in Cobb County, Georgia and Etowah County, Alabama, respective. Southern estimates that the cost of the proposed facilities would be $3,697,450.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

Appendix—Firm Transportation Requests of Southern's Customers

Customer	Request in Mcf per day
Austell	8,295
Cartersville	1,000
Marshall	1,933
Pleasant Grove	1,000
South Georgia	375
Wrens	676

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP89-66-000]

Take notice that on October 17, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-66-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to:

(1) Construct and operate a sales tap on its Line AD in Pittsburg County, Oklahoma, to deliver gas to ALG for service to Joe Clark, a domestic residential customer who would use approximately 352 Mcf per year and about 2 Mcf on a peak day.

(2) Construct and operate a sales tap on its Line AD in Pittsburg County,

Oklahoma, to deliver gas to ALG for service to Vernice A. Jones, a domestic residential customer who would use approximately 352 Mcf per year and about 2 Mcf on a peak day.

(3) Construct and operate a sales tap on its Line S–77 in Webster Parish, Louisiana, to deliver gas to ALG for service to Rodney Hortman, a commerical customer who would use approximately 85 Mcf per year and about 1 Mcf on a peak day.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

AER states that the gas delivered and resold by ALG to the end user would be priced in accordance with the currrently filed rate schedules authorized by the appropriate state regulatory authority.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89–23–000]

Take notice that on October 5, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application in Docket No. CP89–23–000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to abandon all sales services to the Cities of Chanute, Auburn, Garnett, Humboldt, Iola, Neodesha and Osage City, Kansas and the City of Cleveland, Oklahoma, referred to collectively as the "Cities", all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization under section 7(b) of the Natural Gas Act to abandon existing full requirements sales service to the Cities under Williams' prior Rate Schedules F, C and I, and direct sales service to certain direct industrial users owned by the Cities, retroactively effective as of August 5, 1988, the date Cities indicates that it began receiving all of their gas requirements from third-party suppliers under a transportation agreement between Williams and Vesta Energy Company. Williams states that such abandonment authorization is consistent with, and specifically contemplated by, the July 22, 1988, stipulation approved by the United States Court of Appeals for the Tenth Circuit (*City of Chanute, et al* v. *WNG*, No. 88–1225) under which it is indicated that Williams and the Cities terminated all existing sales contracts between them and Cities agreed not to oppose abandonment of sales service in proceedings to be initiated before the Commission by Williams.

Williams states further that abandonment authorization retroactive to the time at which the Cities commenced receipt of 100 percent of their requirements from third-party sources is appropriate and within the Commission's authority under the Natural Gas Act.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89–63–000]

Take notice that on October 14, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–63–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) construction, installation and operation of new mainline compression, measurement, and regulation facilities and (2) the rendition of firm seasonal transportation for certain of Transcontinental Gas Pipe Line Corporation's (Transco) existing customers located in Zones 1 and 2 of Transco's pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate:

- 1,100 horsepower of additional compression and modification and enlargement of existing meter station at Frost Station, Livingston Parish, Louisiana.
- 3,000 horsepower of additional compression, construction of new measuring station, and a new interconnect with Transco at Pearl River Station, Walthall County, Mississippi.
- 2,000 horsepower of additional compression (uprating existing units) at Gallion Station, Marengo County, Alabama.
- 8,780 horsepower of additional compression at Auburn Station, Lee County, Alabama.
- 16,990 horsepower of new compression at a new compressor station to be located at East Tuscaloosa, Jefferson County, Alabama.
- Modifications to enlarge existing Transco meter station at Jonesboro Exchange Station, Clayton County, Georgia.
- 4,390 horsepower of additional compression at a compressor station proposed in another pending application (Docket No. CP89–32–000) at Pell City, St. Clair County, Alabama.

It is indicated that the proposed facilities would cost an estimated $19,661,450 and would be financed initially through short-term loans and cash from current operations, with permanent financing to be arranged as part of Southern's overall long-term financing program.

Southern states that the proposed facilities would enable it to render firm, long-term seasonal transportation service of up to 167,000 Mcf per day during the peak winter months of December, January, and February, and up to 150,300 Mcf per day during the shoulder months of November and March. Southern states that the proposed incremental service would be provided to meet the current need for firm winter service for customers in the southern market area of Transco's pipeline system which have signed precedent agreements with Transco. The customers proposed to be served with the new seasonal transportation service and the specific volumes nominated by each are listed in the Appendix below.

Southern asserts that its proposal is designed to be competitive with and complementary to Transco's proposal for winter season service as filed in Docket No. CP88–760–000. Southern proposes to provide its transportation service in conjunction with the service proposed by Transco. Southern insists that it can install facilities necessary for delivery of the volumes, along with any construction of facilities proposed by Transco downstream of Transco's Station No. 120, at a lower cost of service and with better terms of service.

Under its proposal, Southern states that it would transport gas from two Transco-Southern interconnections (Frost and Pearl River) and would redeliver volumes to Transco at the Clayton County, Georgia interconnection, for ultimate redelivery by Transco at existing points of delivery with the shippers. In the alternative, Southern states that it could redeliver gas directly to those shippers which are customers of both Transco and Southern.

For the seasonal transportation service, Southern proposes to charge an initial monthly reservation charge of $2.29 per Mcf of peak month transportation demand. Southern states that the proposed reservation rate is designed to recover the cost of service attributable to the proposed expansion using the fixed-variable rate design methodology. In addition to the monthly reservation charge, Southern proposes

to charge a volumetric take-or-pay surcharge as set forth in Section 22.3 to the General Terms and Conditions of Southern's FERC Gas Tariff.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of his notice.

CONTRACT QUANTITIES (MCF/D) PROPOSED IN DOCKET NO. CP88-760-000

Shipper	Peak months	Shoulder months
Atlanta Gas Light Co	30,000	27,000
City of Buford	2,000	1,800
Clinton Newberry	1,700	1,530
City of Commerce	390	351
City of Covington	1,500	1,350
Fort Hill Natural Gas Authority	2,500	2,250
City of Fountain Inn	250	225
City of Greenwood	1,875	1,688
City of Greer	1,000	900
City of Kings Mountain	1,000	900
City of Lawrenceville	4,000	3,600
City of Lexington	950	855
Lynchburg Gas Co	1,059	953
City of Monroe	750	675
North Carolina Natural Gas Corp	16,300	14,670
Piedmont Natural Gas Corp	50,000	45,000
Public Service of North Carolina	31,576	28,418
City of Shelby	2,000	1,800
South Carolina Pipeline Corp	10,000	9,000
City of Social Circle	250	225
City of Sugar Hill	1,000	900
Tri-County Natural Gas Co	850	765
City of Union	1,000	900
Georgia United Cities Gas Co	3,800	3,420
S.C. United Cities Gas Co	750	675
City of Winder	500	450

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notion by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24973 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD8818735T]

Designation of Tight Formation, Hidalgo County, TX; Texas-30 Addition 1; Tight Formation Determination

Issued October 24, 1988.

Take notice that on September 15, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that an additional portion of the Tabasco (Vicksburg 10,100) Field, located in Hidalgo County, Texas, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued August 29, 1988, finding that the proposed addition meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24969 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-317-001]

ANR Pipeline Co.; Proposed Changes in the FERC Gas Tariff

October 26, 1988.

Take notice that ANR Pipeline Company ("ANR") an October 21, 1988 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 1
Second Revised Sheet No. 2
First Revised Sheet No. 36
Second Revised Sheet No. 75
Third Revised Sheet No. 77
Third Revised Sheet No. 79
Third Revised Sheet No. 80
First Revised Sheet No. 86
Third Revised Sheet No. 111
Second Revised Sheet No. 112
Third Revised Sheet No. 113
Third Revised Sheet No. 114

It is stated that the preceding tariff sheets are being filed to comform ANR's Original Volume No. 1 FERC Gas Tariff with the Order Approving Abandonments and Issuing Certificate ("Order") issued by the Federal Energy Regulatory Commission ("Commission") on September 21, 1988 in Docket No. CP88-317-000 (44 FERC ¶ 61-361 (1988)).

ANR further states that this filing also reflects the cancellation of the following currently effective tariff sheets in ANR's Original Volume No. 1:

Original Sheet No. 33
Original Sheet No. 34
First Revised Sheet No. 35
Original Sheet No. 93

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426 by November 2, 1988 in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24979 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-6-000]

El Paso Natural Gas Co.; Tariff Filing

October 25, 1988.

Take notice that on October 20, 1988, pursuant to section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Act, El Paso Natural Gas Company ("El Paso") submitted Second Revised Sheet No. 101 to its FERC Gas Tariff, First Revised Volume No. 1 to become effective November 1, 19?8.

El Paso states that the tendered tariff sheet, when accepted by the Commission and permitted to become effective, will permit El Paso to discount a specified component of its commodity sales rates from time to time and at any time upon 24-hours' notice to the Commission. El Paso made this request to assist it in addressing a critical operational emergency that has recently developed on El Paso's system. El Paso specifically seeks authority to discount the non-gas component of such rates not to exceed the portion thereof attributable to the costs of El Paso's Reserve for Exploration ("RFX") properties. El Paso states that the RFX properties constitute a source of gas supply to support its sales and the costs thereof, being exclusively supply-related, are allocated exclusively to El Paso's sales services and are included in the "non-gas" component of such rate. El Paso states that inasmuch as none of such costs are reflected in the calculation of its rates for transportation services, such discounts as El Paso may offer from time to time would not appropriately apply to El Paso's transportation rates. El Paso will apply such discounts to all sales for resale without discrimination. In order to be able to offer such discounts, El Paso respectfuly requests waiver as necessary of all applicable Commission rules and regulations.

El Paso states that on June 1, 1988, in Docket No. RP88-44-000, El Paso indicated that the RFX costs included in its currently effective sales commodity rates equate to $.3088 per dth. El Paso beleives that the ability to discount the non-gas component of its commodity sales rates by as much as $.3088 per dth from time to time could be of critical importance in assisting it to achieve and maintain levels of sales sufficient to permit it to avoid the operational crisis which it now faces. El Paso proposes to file on or before October 28, 1988, the proposed tariff sheet reflecting the amount of the discount to be offered by El Paso, effective November 1, 1988.

Because of the emergency nature of this request, El Paso respectfully requested that the Commission grant such waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheet to become effective on November 1, 1988 and to remain effective until the earlier of July 1, 1989 or the effective date of a Gas Inventory Charge, or similar mechanism, and/or approval of the transfer of the RFX costs to the purchased gas component of its sales rates.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persom wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24983 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-220-001]

Mississippi River Transmission Corp.; Tariff Filing

October 25, 1988.

Take notice that on October 20, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Twenty-Sixth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective October 1, 1988.

MRT states that its filing is being submitted to comply with the Commission's September 20, 1988 Order in the above-referenced proceeding which required MRT to file within thirty (30) days a revised tariff sheet incorporating its latest purchased gas cost adjustment filing which became effective September 1, 1988, in Docket No. TQ88-1-25-000. MRT states that the instant filing also reflects MRT's most recent Annual Charge Adjustment currently reflected on Twenty-Sixth Revised Sheet No. 4 which was made effective October 1, 1988, in Docket No. TM89-1-25-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.211). All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24980 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-63-000, RP86-114-000, RP88-17-000, RP88-96-000, RP88-210-000 and RP88-229-000]

Southern Natural Gas Co.; Informal Settlement Conference

October 24, 1988.

Take notice that a conference will be convened in these proceedings on November 4, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-reference dockets.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo (202) 357–5737.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24982 Filed 10–27–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–239–001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 24, 1988.

Take notice that on October 19, 1988, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

First Substitute Sixty-Fourth Revised Sheet No. 3–A
First Substitute Original Revised Sheet No. 3–A.5
First Substitute Original Revised Sheet No. 3–A.6

The proposed effective date of these revised sheets is September 29, 1988.

First Substitute Sixty-Fifth Revised Sheet No. 3–A

The proposed effective date of this revised tariff sheet is October 1, 1988.

Trunkline states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 order in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500. Ordering Paragraph (B) of the September 28 Order required Trunkline to allocate amounts attributable to Mississippi River Transmission Corporation, remove carrying charges which predate the September 29, 1988 effective date and to eliminate any payments to producers which were affiliated with Trunkline at the time take-or-pay settlements were entered into. Trunkline states that the revised tariff sheets filed herewith have been adjusted to reflect the requirements of the Commission's September 28, 1988 order.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding and the parties to the Docket No. RP88–180–000 proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before Oct. 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24971 Filed 10–27–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88–177–003 RP88–230–002]

Texas Gas Transmission Corp.; Tariff Filing

October 26, 1988.

Take notice that on October 21, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. RP88–177

June 1, 1988 Effective Date

Second Substitute Seventh Revised Sheet No. 14
Substitute Original Sheet No. 14A
Substitute Original Sheet No. 14B
Substitute Original Sheet No. 14C

Docket No. RP88–230

September 1, 1988 Effective Date

Substitute Original Sheet No. 14D
Substitute Original Sheet No. 14E
Substitute Original Sheet No. 14F
Substitute Original Sheet No. 14G

Texas Gas states that this filing is made to reflect revisions in the allocation of both United Gas Pipeline Company and Tennessee Gas Pipeline Company's take-or-pay charges to Texas Gas's downstream customers. In both dockets Texas Gas has reallocated charges, originally proposed to be recovered by Texas Gas from ANR Pipeline Company, to its current jurisdictional and nonjurisdictional, as ordered by the Commission. The filing also corrects a minor error in Associated Natural Gas Company's 1982 sales volumes by adjusting the volume downward by 24,152 Mcf. Finally, with respect to the flowthrough of United's take-or-pay charges, the filed tariff sheets track modification of United's charges due to a compliance filing made by United on August 31, 1988. Texas Gas proposes the revised tariff sheets remain effective as of June 1 and September 1, 1988, respectively, the dates the initial tariff sheets were allowed to go into effect.

Copies of this filing have been served upon Texas Gas's jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24981 Filed 10–27–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88–17–000]

Southern Natural Gas Co.

October 24, 1988.

Take notice that on September 30, 1988, Southern Natural Gas Company, (Southern), tendered for filing a Petition For Extension of Time concerning certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81–64–000. By order dated December 30, 1981, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of Southern's resale and direct sale customers. One provision of the Stipulation and Agreement requires Southern to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

By letter dated June 7, 1988, Southern advised its customers of its intention to update the Index of Requirements. At

that time, Southern intended that this general update of the Index of Requirements would include its customer's EAU requirements so that it would not be necessary to undertake separately the triennial review contemplated by the Stipulation and Agreement. Since that time, two factors have occurred which, Southern alleges, confirm that it is not necessary to undertake the separate update of EAU requirements this year. First, in an order issued on July 27, 1988 in Docket No. RP88–17–000, the Commission directed Southern to complete an update of its Index of Requirements "as soon as practicable." Second, according to Southern, its customers have repeatedly questioned the desirability of conducting an EAU update this year.

Southern alleges that there is good cause for waiving the triennial update of EAU requirements as requested herein. Although Southern and its customers have already initiated the process of revising Southern's Index of Requirements in accordance with the Commission's Order of July 27, 1988, Southern states that its customers have advised that it is not possible for them to complete the survey of all their customers in time for a revised Index to be implemented for use this winter. Notwithstanding that fact, since the revision will include EAU requirements, according to Southern, all of their customers have indicated that they do not desire to undertake separately a survey of their EAU requirements this year.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such Motions or Protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretay.

[FR Doc. 88–24970 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL. 3469–1; EPA Project Number SAC 87–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Sierra Pacific Industries' Loyalton Project

AGENCY: Environmental Protection Agency (EPA),Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 31, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 20 MW wood-fired cogeneration project located in Loyalton, Sierra County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x: 36.9 lbs/hr or 0.110 lb/MMbtu (3-hour average), CO: 167.8 lbs/hr or 0.50 lb/MMBtu (3-hour average).

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements includes Multi-Clones, ESP, Ammonia injection, high pressure secondary air injection.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by December 27, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

Date: October 19, 1988.

[FR Doc. 88–24964 Filed 10–27–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3468–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 10, 1988 through October 14, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS–AFS–J82008–MT, Rating EC2, 1987 Deerlodge National Forest, Noxious Weed Control Program, Herbicide Use, Implementation, Deer Lodge, Granite, Jefferson, Madison, Powell and Silver Bow Counties, MT.

Summary:

EPA has concerns with the lack of detailed environmental monitoring plans, the absence of cumulative effects discussions, and the limited range of wildlife species included in the assessment.

ERP No. D–BLM–K60065–CA, Rating LO, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA.

Summary:

EPA lacks of objections to the proposed action.

Final EISs

ERP No. F–BLM–K65113–00, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV.

Summary:

EPA expressed continuing concerns that vegetation management activities could adversely impact ground water, surface water and protected beneficial uses. EPA requested that the Record of Decision commit to specific ground water protection measures and a ground water monitoring program.

ERP No. F–FHW–D40228–VA, VA–664 Construction, US 58 Interchange at Bowers Hill in the City of Chesapeake to US 17 in the City of Suffolk, Funding Section 10 and 404 Permit, VA.

Summary:

EPA believes that the document should address the impacts of secondary development stimulated by a project on wildlife and the natural environmental in greater detail.

ERP No. F–NPS–L61175–AK, Noatak National Preserve, Wilderness Recommendation, Designation or Nondesignation, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NPS-L61177-AK, Aniakchak National Monument and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-NPS-L61178-AK, Kobuk Valley National Park, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-SCS-E36162-MS, Whites Creek Watershed Protection and Flood Prevention Plan, Funding, Possible 404 Permit and Implementation, Webster County, MS.

Summary:

EPA's draft EIS concerns on this facility have been satisfactorily addressed.

ERP No. FS-SFW-L64024-AK, Kenai National Wildlife Refuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula Borough, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

Dated: October 25, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24944 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3468-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075. Availability of Environmental Impact Statements Filed October 17, 1988 Through October 21, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880350, Final, FHW, NY, Lockport Expressway/I-990 Extension, North French Road to Millersport Highway/NY-263 To Transit Road, Funding, 404 Permit, Erie County, NY. Due: November 28, 1988. Contact: Harold J. Brown (518) 472-3616.

EIS No. 880351, Draft, UMT, CA, Colma BART Station Project, Transit Improvements, Funding, San Mateo County, CA, Due: December 12, 1988, Contact: Carmen Clark (415) 974-7317.

EIS No. 880352, DSuppl, FHW, NY, Southern Tier Expressway Construction, Corning Area, Painted Post to NY-414, Reevaluation of Alternatives and Updated Information, Funding, Steuben County, NY, Due: December 12, 1988, Contact: Harold J. Brown (518) 472-3616.

EIS No. 880353, Final, BLM, CA, Western Mojave Land Tenure Adjustments Project, Implementation, Kern, Los Angeles, and San Bernardino Counties, CA, Due: November 28, 1988, Contact: Karla Swanson (619) 256-3591.

Dated: October 24, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24943 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3468-8]

City of Tallahassee-Leon County, Florida Wastewater Management Amendment to the Notice of Intent To Prepare an Environmental Impact Statement (EIS) Supplement.

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: This notice is an amendment to the Notice of Intent (NOI) to prepare a supplement to the Tallahassee-Leon County, Florida Wastewater Management Environmental Impact Statement (1983).

Purpose: EPA issued a Notice of Intent to prepare an EIS on proposed wastewater management facilities for Tallahassee, Florida on January 8, 1988. EPA is issuing this amendment to inform the public that a second Federal action will be addressed in the EIS. The EIS will address the possible transfer of land from the United States Forest Service (USFS) to the City of Tallahassee.

For Further Information and to be Placed on the Project Mailing List Contact: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB-4, US EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Telephone: (404) 374-7109 or (FTS) 257-3776.

Need for Action: The EPA, the City of Tallahassee, and the Leon County Board of County Commissioners previously determined the need to reevaluate the selected alternative in the Tallahassee-Leon County Wastewater Management EIS (1983). Subsequent to the initial public scoping meeting held April 19, 1988, the City of Tallahassee and the USFS have decided to examine the possibility of exchanging land to be used for new irrigation sprayfields. Population and sewage flow projections and alternative locations of treatment facilities and irrigation sprayfields will be addressed. The results of the EIS supplement will be used in determining EPA 201 Construction Grant funding eligibility and the acceptability of transfer of lands to the City of Tallahassee by the USFS.

Alternatives: The EIS supplement will examine the feasible long-term alternatives for wastewater management in the study area including proposed land exchange alternatives.

Scoping: A scoping meeting to address issues that should be considered regarding possible land exchanges with the USFS will be held on November 15, 1988 at 7:30 pm at the Tallahassee City Commission Chambers. Input to the EIS supplement may also be submitted in writing to the contact person listed above. Participation in the EIS process is invited from individuals, organizations, and government agencies. Persons wishing to be included on the mailing list to receive a copy of the draft EIS supplement should write to the same address.

Estimated Date of Draft EIS Release: July 1989.

Responsible Official: Greer Tidwell, Regional Administrator.

Dated: October 25, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24945 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-01-M

[OPP-36165; FRL-3469-3]

Pesticide Registration; Availability For Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft Standards for comment.

SUMMARY: This notice announces the availability of draft pesticide Registration Standard documents for comment. The Agency has completed a review of the listed pesticides and is making available documents describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standards should be

submitted on or before December 27, 1988.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to: By mail: Public Information Branch, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact the Public Information Branch, in Rm. 246 at the address given above (703–557–2805). Requests should be submitted no later than November 28, 1988 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to the Registration Standard, contact the Production Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

Draft Registration Standards for the following pesticides are now available:

Name of pesticide	Docket number	Contact person
Methidathion	950–37–8	Dennis Edwards, Product Manager 12, 703–557–2386.
Chlorothalonil	1897–45–6	Lois Rossi, Product Manager 21, 703–557–1900.

Copies of the Registration Standards may be obtained from the Agency at the address listed under FOR FURTHER INFORMATION CONTACT. Because of the length of the Standards and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standards are also available for inspection and copying in EPA Regional offices at the addresses listed below after November 28, 1988.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch, EPA—Region I, JFK Federal Building, Boston, MA 02203, Contact person: Marvin Rosenstein

Pesticides and Toxic Substances Branch, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, Contact Person: Ernest Regna

Toxics and Pesticides Branch, EPA—Region III, 841 Chestnut St., 7th Fl., Philadelphia, PA 19107, Contact person: Larry Miller

Pesticide and Toxic Substances Branch, EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30365, Contact Person: Richard DuBose

Pesticides and Toxic Substances Branch, EPA—Region V, 230 South Dearborn St., Chicago, IL 60604, Contact person: Phyllis Reed

Pesticide and Toxic Substances Branch (6T–PT), EPA—Region VI, 1445 Ross Avenue, Dallas, TX 75270, Contact person: Robert Murphy

Pesticide and Toxic Substances Branch, EPA—Region VII, 726 Minnesota Ave., Kansas City, KS 66101, Contact person: Leo Alderman

Toxic Substances Branch, EPA—Region VIII, 999 18th St., Suite 500, Denver, CO 80202, Contact person: C. Alvin Yorke

Pesticides and Toxics Branch (T–5–1), EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, Contact person: Davis Bernstein

Pesticides and Toxic Substances Branch, EPA—Region X, 1200 6th Ave., Seattle, WA 98101, Contact person: Ken Feigner.

Dated: October 17, 1988.

Susan H. Wayland,

Acting Director, Office of Pesicide Programs.

[FR Doc. 88–24961 Filed 10–27–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–62069; FRL–3469–2]

Receipt of Application for Approval to Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from AmerEco Environmental Services, Inc. (AmerEco), Kingsville, Missouri, for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using a mobile modular rotary kiln incinerator. This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of the request, and comments may be submitted.

DATE: Comments should be received by November 28, 1988.

ADDRESS: Three copies of written comments should be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS–62069. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE–G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202–554–1404), TDD–(202–554–0551).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances (OPTS) share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), on PCB disposal methods involving less than 500 pounds of PCB material. The Assistant

Administrator for OPTS determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material. Notwithstanding, the Assistant Administrator for OPTS may delegate the authority to review and approve any aspect of a disposal system to OPTS staff or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the **Federal Register** of March 30, 1983 (48 FR 13181)..

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30-day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration approval. If the application cannot be approved because the process demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application from AmerEco is for nationwide permission to operate a mobile rotary kiln incinerator for the destruction of PCB wastes including solids, sludges, and liquids. This process is based on an existing system design currently operating in Europe.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: October 20, 1988.

Martin P. Halper,

Director, Exposure Evaluation Division, Office of Toxic Substances.

[FR Doc. 88-24962 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3468-9]

Fuels and Fuel Additives; Modification of a Fuel Waiver Granted to the Texas Methanol Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has reconsidered a portion of a fuel waiver granted under section 211(f) of the Clean Air Act to the Texas Methanol Corporation (Texas Methanol) (53 FR 3636, February 8, 1988, and 53 FR 17977, May 19, 1988). Today's notice approves the use of an alternative corrosion inhibitor, DMA-67, in Texas Methanol's gasoline-alcohol fuel, OCTAMIX.

ADDRESS: Copies of the information relative to this request are available for inspection in public docket EN-87-06 at the Central Docket Section (LE-131A) of the EPA, South Conference Center, Room 4, 401 M Street, SW., Washington, DC, (202) 382-7548, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney/Advisor, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 383-2635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce or to increase the concentration in use of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. The same section specifies that if the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver authorized by section 211(f)(4) shall be treated as granted.

The Texas Methanol Corporation received a waiver for a gasoline-alcohol fuel blend, known as OCTAMIX, consisting of a maximum of 3.7 percent by weight fuel oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvents and 42.7 milligrams/liter (mg/1) of Petrolite TOLAD MFA-10 corrosion inhibitor. As was the case with a previous waiver granted by EPA, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their formulations are acceptable as alternatives to TOLAD MFA-10. (*See* Reconsideration of DuPont Waiver, 51 FR 39400, October 31, 1986.)

On April 25, 1988, E. I. DuPont de Nemours and Co., Inc., (DuPont) requested that EPA allow the use of an alternative corrosion inhibitor, DMA-67, in OCTAMIX. DMA-67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent, much like Petrolite's TOLAD MFA-10.

On July 7, 1988, EPA published a notice in the **Federal Register** (53 FR 25537) announcing receipt of DuPont's request and inviting comment on it. The comment period closed August 8, 1988.

II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility data could show a potential failure of fuel systems, emissions related parts and emission control parts from use of the fuel or additive. Any failure could result in greater emissions.

Initially, Texas Methanol requested the use of TOLAD MFA-10 or an appropriate concentration of any other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineers's test TM-01-72 (NACE Rust Test). However, EPA concluded that compliance with the NACE Rust Test alone was not adequate in determining the suitability of a corrosion inhibitor. (*See* OCTAMIX decision 53 FR 3636, February 8, 1988.) The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation as environmentally acceptable.

In a prior decision involving a gasoline-alcohol fuel with a composition very similar to OCTAMIX, EPA concluded that DMA-67 was comparable to TOLAD MFA-10 and DGOI-100 (another DuPont additive which contains a corrosion inhibitor). *See* 52 FR 18736, May 19, 1987. DuPont incorporated by reference the same supporting information into this application as was considered in that decision.

The principal ingredient in DMA-67 relative to corrosion inhibition is DCI-11, which is currently used in over 80 percent of the fuel grade ethanol manufactured in the United States. DCI-11 was specifically designed to provide corrosion protection to gasoline-alcohol blends.

In order to determine whether the OCTAMIX waiver would meet the criteria of section 211(f) if DMA-67 were to be used as an inhibitor, EPA reviewed all data submitted with or referenced by the application. The only commenter, Ford Motor Company, stated that it had reviewed the data and rationale presented in the application and had no objection for approval of the waiver modification at this time.

III. Finding and Conclusion

Based of the information submitted by DuPont in its application, I conclude that the performance of DMA-67 in OCTAMIX would be comparable to TOLAD MFA-10. Therefore, I am modifying condition (3) of the OCTAMIX waiver to read as follows:

(3) Any one of the following two corrosion inhibitor formulations must be included:

(a) Petrolite's corrosion inhibitor formulation, TOLAD MFA-10, blended in the final fuel at 42.7 mg/1;

OR,

(b) DuPont's corrosion inhibitor formulation, DMA-67, blended in the final fuel at 31.4 mg/1.

This should provide additional flexibility to any manufacturer wishing to produce the OCTAMIX blend. At the same time, any manufacturer wishing to use a corrosion inhibitor other than the two permitted by the OCTAMIX waiver must apply for a further revision of the waiver. Since EPA is still unaware of any basis for extrapolating findings in the emissions impact of one inhibitor to other inhibitors, the Agency will continue to examine the emissions impact of specific corrosion inhibitor formulations on a case-by-case basis.

IV. Miscellaneous

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act or other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this section on small business entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Ciruit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date of publication of this notice. Under section 307(b)(2), judicial review may not be obtained in any subsequent judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

[FR Doc. 88-24965 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of 3067-0156

Title: State Operating Plan for Superfund Relocation Assistance

Abstract: States may elect to administer permanent relocation activity, to individuals, businesses, and community facilities requiring relocation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. When a State agrees to administer all or part of the relocation activities, the State must submit a permanent relocation plan to FEMA for approval. This revision adds the planning requirements for permanent relocation assistance to the already approved requirements for temporary relocation assistance.

Type of Respondents: State or local governments

Estimate of Total Annual Reporting and Recordkeeping Burden: 36

Number of Respondents: 12

Estimated Average Burden Hours Per Response: 3 hours

Frequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Managment and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: October 20, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–24930 Filed 10–27–88; 8:45 am]

BILLING CODE 6718–01–M

Notice of FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: November 22, 1988.

Time: 9:00 a.m.–4:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget and personnel. The status of a review of Civil Defense Programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Sessions on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Deputy Director.

[FR Doc. 88–24929 Filed 10–27–88; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Fedeal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010689–034.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed modification would permit a conference carrier who merges with a nonconference carrier to fulfill the nonconference carrier's contractual obligations in connection with service contracts.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 25, 1988.

[FR Doc. 88–24977 Filed 10–27–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1964.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200165.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Ceres Corporation (Ceres)

Synopsis: The agreement provides Ceres with a three year lease of portions of the Dundalk Marine Terminal for the berthing of vessels, the loading, discharging and storage of cargo, and related services. Ceres will receive volume discounts from MPA's terminal tariff rates if it meets an initial minimum tonnage level.

Agreement No.: 224–200164.

Title: Port of Oakland Terminal Use Agreement.

Parties:

City of Oakland
Compagnie Maritime Belge (CMB)

Synopsis: The agreement provides that CMB shall have a nonexclusive right to use certain assigned premises at the Port's Charles P. Howard Terminal for its published regularly scheduled Northern California port of call. In return for CBM's use of the premises, the Port shall receive ninety percent of all revenue from dockage and wharfage earned on the assigned premises pursuant to Port of Oakland Tariff in lieu of payment of one hundred percent of said tariff charges.

Agreement No.: 224–200163.

Title: Mid-Gulf Seaports Marine Terminal Conference Agreement.

Parties: Ports of New Orleans, Lake Charles, Baton Rouge, Orange, Gulfport, Beaumount, Houston, Galveston, South Louisiana, Brownsville, Port Arthur, Tampa, Pensacola, Panama City, Brazos River Harbor, Corpus Christi and Alabama State Docks.

Synopsis: The proposed agreement provides for the parties to consult with one another and to establish port marine terminal rates, charges and rules in connection with marine terminal services and facilities. The agreement also provides that the parties may limit the agreement to the establishment of one rate, rule or regulation of a particular character.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 25, 1988.

[FR Doc. 88-24978 Filed 10-27-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Trust Financial Services Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 21, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Community Trust Financial Services Corporation,* Hiram, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Trust Bank, Hiram, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Chartered Bancorp, Inc.,* Schaumburg, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of American Chartered Bank, Schaumburg, Illinois.

2. *First Suburban Bancorp Corporation,* Maywood, Illinois; to acquire 100 percent of the voting shares of First State Bank of Alsip, Alsip, Illinois.

3. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metro Bancorp, Incorporated, Phoenix, Arizona, and thereby indirectly acquire Metropolitan Bank, Phoenix, Arizona.

4. *IBT Bancorp,* Mount Pleasant, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Isabella Bank and Trust, Mount Pleasant, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *BON, Inc.,* Moundridge, Kansas; to acquire 92.5 percent of the voting shares of The Farmers State Bank and Trust Company, Canton, Kansas.

2. *State National Bancshares, Inc.,* Heavener, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of State National Bank of Heavener, Heavener, Oklahoma.

3. *United Community Corporation,* Oklahoma City, Oklahoma; to acquire at least 80 percent of the voting shares of BancFirst, Oklahoma City, Oklahoma, in organization.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24913 Filed 10-27-88; 8:45 am]

BILLING CODE 1210-01-M

Jacob Schmidt Company and American Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies, and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement for the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regaring the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jacob Schmidt Company and American Bancorporation, Inc.,* St. Paul, Minnesota; to acquire 100 percent of the voting shares of Barnesville Investment Corporation, Barnesville, Minnesota, which owns The First National Bank of Barnesville, Barnesville, Minnesota.

In connection with this application, Applicant has also applied to acquire First Agency of Barnesville, Inc., Barnesville, Minnesota, and thereby engage in general insurance agency activities which are permissible pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24914 Filed 10-27-88; 8:45 am]

BILLING CODE 6210-01-M

Tokai Bank, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Tokai Bank, Limited,* Nagoya, Japan; to acquire Master Lease Corporation, Bala Cynwyd, Pennsylvania, and thereby engage in acting as agent, broker, or adviser in leasing personal property through Toshiba Master Lease, Ltd., ABI-Master Lease, Ltd., Simplex Master Lease, Ltd., and NYNEX Master Lease Partners, all pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24915 Filed 10-27-88; 8:45 am]

BILLING CODE 6210-0-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:00 a.m. and ends at 5:00 p.m. on Thursday, November 17, 1988 and begins at 9:00 a.m. and ends at 4:00 p.m. on Friday, November 18, 1988; and from 9:00 a.m. to 12 Noon on Saturday, November 19, 1988.

Place: On Thursday, November 17 from 9:00 to 4:00 p.m. Board room, The York Hotel, 940 Sutter Street, San Francisco, CA. On Friday, November 18, from 9:00 to 12 Noon, meeting will be held in the Board Room, The York Hotel; from 1:00 p.m. to 4:00 p.m., White Conference on Aging Forum at the Gerontological Society's Annual Scientific Meeting, Tiburon Room, San Francisco Hilton Hotel, San Francisco, CA.

Status: Meeting is open to the public.

Contract person: Pete Conroy, Room 4545, Wilbur J. Cohen North Building, 330 Independence Avenue, SW., Washington, DC 20201; Phone: 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (PL 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory committee Act (PL 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on November 17 through November 19, 1988 from 9:00 AM-5:00 PM and from 9:00 AM-4:00 PM respectively. On November 18, the afternon session from 1 p.m.-3 p.m., will be a *Forum on the 1991 White House Conference on Aging,* at the GSA Conference on Aging, Tiburon Room, San Francisco Hilton Hotel, San Francisco. On November 19 the FCoA quarterly meeting will reconvene at the York Hotel, 940 Sutter Street, San Francisco, CA.

The agenda will include: *A White House Conference on Aging Forum* At the Gerontological Society's Conference. Participants are as follows: Testimony from organizations and individuals on suggested themes for the WHCoA conference, as well as on issues to be addressed, organization and process, participation, pre-and post-conference activities, and other relevant areas; Jack McCarthy, AoA Program Director, Region IX. The rest of the three-day meeting will include discussion of Targeting of OAA Funds Review, Committee Reports, Older Worker Employment, and Agenda Projects including the 1991 White House Conference on Aging Plan project.

Dated: October 24, 1988.

Inqrid Azvedo,

Chairperson Federal Council on the Aging.

[FR Doc. 88-24986 Filed 10-27-88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently at 52 FR 23212-13, June 18, 1987, and 52 FR 26187, July 13, 1987), is amended to reflect the reorganization of the Office of the Administrator and National Institute on Drug Abuse, ADAMHA.

The reorganization accomplishes the following: (1) revises the functional statement of the immediate Office of the Administrator to include science policy functions transferred from the Office of Science; (2) abolishes the Office of Financing and Coverage Policy distributing agency data policy, OMB reports clearance and Block Grant administration to other offices within the Office of the Administrator, and reassigns responsibility for reimbursement and financing policy to the National Institute on Drug Abuse.

Under Section HM-B, Organization and Functions, Office of the Administrator (HMA), delete the statement and substitute the following:

(1) Provides leadership in the development of agency policies and programs; (2) develops ADAMHA science policy and ensures that the scientific mission of the agency is reflected in all agency activities; (3) carries out ADAMHA-wide functions

such as coordination of equal employment opportunity activities; and (4) maintains liaison with the Assistant Secretary for Health, the Surgeon General, and the public and private sectors on matters related to program and other activities as may be required.

Under the heading Office of Financing and Coverage Policy (HMA6), delete the title and statement.

Under the heading Office of Policy Coordination (HMA2), following item (7), delete the "and," and after item (8) delete the period, add a semicolon and item (9): coordinates agency data policy activities as they relate to the planning, collection, management, evaluation, and dissemination of agency statistical and epidemiologic data and performs the OMB reports clearnace funtions.

Under the heading Office of Communications and External Affairs (HMA4) following item (8) delete the "and," and following item (9) delete the period and add a semicolon and items (10), (11), (12), and (13), as follows:

(10) administers the ADM services block grant program, including compliance reviews, technical assistance to States, Territories, and Indian Tribes; (11) administers the Emergency Substance Abuse Treatment and Rehabilitation block grant program; (12) establishes, implements, analyzes, and coordinates agency data policy and data activities as they relate to block grant programs statistical data; and (13) provides for information exchange between ADAMHA and other Government agencies and State and local governments on matters relating to aclohol, drug abuse and mental health programs.

Under the heading Office of Science (HMA5) delete the title and statement and substitute the following:

Office of Extramural Programs (HMA5) (1) Provides leadership and advice in the development of extramural program policy and implementation of extramural programs; (2) develops, evaluates, and provides guidance on policies relating to peer review of all discretionary grant and cooperative agreement applications and research contracts; (3) performs centralized grant application receipt and referral; (4) conducts analyses of agencywide extramural policy, research infrastructure and research system issues; (5) collects data and prepares recurring and special reports on ADAMHA extramural programs; and (6) provides advice on and coordinates implementation of committee management policies and procedures.

Under Section HMH, National Institute on Drug Abuse (HMH), delete the statement for the *Office of the Director (HMH1),* and substitute the following:

Office of the Director (HMH1) (1) Provides leadership, direction, and policy in the development of Institute goals, priorities, policies, and programs and serves as the focal point for the Development's efforts on drug abuse; (2) conducts and coordinates Institute's interagency and international activities; (3) conducts Institute activities associated with the scheduling of psychoactive drugs, their medical and nonmedical use, and their diversion from legitimate medical channels; (4) collaborates with other Federal agencies to establish standards for drug prescribing practices; and (5) develops, implements, and reviews all reimbursement, financing, and coverage policy and research involving financing and coverage policy for drug abuse programs (including alcohol).

Date: October 19, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-24928 Filed 10-27-88; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Tuesday, November 15, 1988, from 9:30 a.m. until 12:30 p.m. or until business is concluded. The meeting will convene at the Washington, Dulles Ramada Renaissance, Route 28 (Sully Road), 13869-71 Part Center Road, Herndon, Virginia. It will be open to the public, subject to the availability of space.

The agenda will include: Introduction of new members, reports of task force activities, and any recommendations for possible action by the Committee. The Committee will vote on the final versions of two recommendations. The first, prepared by the Advanced Materials Task Force, discusses advanced materials processing and fabrication. The second is a recommendation by the Defense Industrial Base Task Force offering suggestions for better coordination of defense industrial base issues.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The Committee is particularly interested in hearing any comments or suggestions regarding advanced materials and technology issues which fall within the purview of the Committee. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Committee staff (see below) of their intention to appear.

FOR FURTHER INFORMATION CONTACT: Brenda Kay, Department of the Interior, Washington, DC, Room 6650, (202) 343-2136.

Dated: October 25, 1988.

Brenda Kay,

Staff Assistant.

[FR Doc. 88-25014 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-930-09-4212-11; N-43030]

Classification Termination and Opening Order; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-43030 and opens the affected lands to the operation of the public land laws including location under the mining laws.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-8800.

SUPPLEMENTARY INFORMATION: In April 1987, a Notice of Realty Action (NORA) was issued which identified the following described land as being suitable for lease/purchase pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4):

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 17, N½NE¼NE¼NE¼.

The NORA provided for classification of the lands as well as segregation against all forms of appropriation under the public land laws and location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. A lease was subsequently issued to the Animal Rescue Foundation for an animal adoption center. No development has taken place on the land and on August 8, 1988, the lease was relinquished. A determination has been made that the Recreation and

Public Purposes classification and segregation are no longer appropriate.

At 10:00 a.m. on November 28, 1988, the land will be open to the operation of public land laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m. on November 28, 1988, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on November 28, 1988, the land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attemped adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-24995 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-920-09-4212-13; A-22880]

Exchange of Public and Private Lands in Mohave anbd Yavapai Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Cyprus Bagdad Copper Corporation, Byner Cattle Company, and Cyprus Mineral Park Corporation. The United States transferred title to 6,101.22 acres in Mohave and Yavapai counties and accepted title to 3,488.44 acres, also in Mohave and Yavapai Counties.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On October 5,1988, the Bureau of Land Management issued Patent Nos. 02-89-0001 through 02-89-0004, and Deed No. AZ-89-001, pursuant to the Federal Land Policy and Management Act of October 21, 1976.

Patent No. 02-89-0001 transferred the mineral estate in the following public land to Cyprus Bagdad Copper Corporation:

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼ NW¼, E¼SW¼, SE¼;
Sec. 7, lots 1 and 2, E½NW¼;
Sec. 10, lots 1 and 2.
T. 14 N., R. 10 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 11, N½NE¼, NW¼;
Sec. 12, N½N½, SE¼NE¼;
T. 15 N., R. 9 W.,
Sec. 28, lot 4, E½SW¼, W½SE¼;
Sec. 29, lots 20, 21 and 22, N½N½, SE¼ NE¼;
Sec. 31, lots 1 to 6, incl., S½NE¼, E½W½, SE¼;
Sec. 33, lots 1 and 6, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 34, lot 1, W½NE¼, E½NW¼.

The area described comprises 3,468.97 acres in Yavapai County.

Patent No. 02-89-002 transferred the following public land to Cyprus Bagdad Copper Corporation:

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 4, lots 8, 9, and 10, incl., and lot 26;
Sec. 5, lot 5, SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, W½E½NE¼SW¼, W½NE¼SW¼, W½SW¼, S½NE¼ SE¼SW¼, W½SE¼SW¼, SE¼SW¼, NE¼SW¼SE¼, S½SW¼SE¼;
Sec. 8, lots 3 and 12, S½SW¼NE¼NE¼, W½E½NW¼NE¼, W½NW¼NE¼, S½ SE¼SE¼NE¼, N½NE¼NW¼, SE¼ NE¼NW¼;
Sec. 9, SW¼SE¼NW¼.
T. 15 N., R. 9 W.,
Sec. 27, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 28, lots 2 and 5, N½N½NE¼, N½S½ N½NE¼;
Sec. 29, Lots 12, 13 and 14, S½NW¼NW¼ SW¼, SW¼NW¼SW¼, N½NW¼ SW¼SW¼;
Sec. 30, lot 4, and lots 7 to 13, incl.:
Sec. 32, lot 45;
Sec. 33, lots 15 to 18, incl.
T. 15 N., R. 10 W.,
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½.
T. 16 N., R. 10 W.,
Sec. 1, lot 6.

The area described comprises 1,824.60 acres in Yavapai County.

Patent No. 02-89-0003 transferred the following public land to Byner Cattle Company:

Gila and Salt River Meridian

T. 16 N., R. 13 W.,
Sec. 10, W½E½;
Sec. 22, W½NE¼.
T. 16½ N., R. 13 W.,
Sec. 34, NW¼NW¼.

The area described comprises 280.00 acres in Mohave County.

Patent No. 02-89-0004 transferred the following public land to Cyprus Mineral Park Corporation:

Gila and Salt River Meridian

T. 20 N., R. 18 W.,
Sec. 6, lots 9 and 11, E½SE¼SE¼SE¼;
Sec. 8, W½NW¼NW¼NE¼;
Sec. 18, lot 6.
T. 21 N., R. 18 W.,
Sec. 34, W½SW¼SW¼SE¼.

The area described comprises 30.00 acres in Mohave County.

Deed No. AZ-89-001 transferred the following public land to Byner Cattle Company:

Gila and Salt River Meridian

T. 16 N., R. 13 W.,
Sec. 11, W½SW¼;
Sec. 15, W½NE¼.
T. 16½ N., R. 13 W.,
Sec. 21, lot 1, NE¼SE¼;
Sec. 27, SW¼SW¼;
Sec. 33, E½NE¼, SE¼SE¼.
T. 17 N., R. 13 W.,
Sec. 35, E½SE¼.

The area described comprises 497.65 acres in Mohave County.

In exchange land was conveyed to the United States from Cyprus Bagdad Copper Corporation and Byner Cattle Company.

The land conveyed to the United States from Cyprus Bagdad Copper Corporation is described as follows:

Gila and Salt River Meridian

T. 16 N., R. 10 W.,
Sec. 25, M.S. 1683 B.

The area described comprises 4.995 acres in Yavapai County.

The land conveyed to the United States from Byner Cattle Company is described as follows:

Gila and Salt River Meridian

T. 14 N., R. 10 W.,
Sec. 7, lot 4;
Sec. 18, lot 1, NE¼NW¼.
T. 15 N., R. 10 W.,
Sec. 15, SW¼SE¼;
Sec. 21, SE¼SW¼, SE¼;
Sec. 22,N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NW¼NW¼.
T. 15 N., R. 14 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 11, NW¼NE¼, W½, W½SE¼, SE¼SE¼.
T. 26 N., R. 13 W.,
Sec. 9, NE¼SE¼, N½N½N½SE¼SE¼;
Sec. 11, E½NW¼;
Sec. 23, SE¼SW¼;
Sec. 26, NW¼NE¼, N½SW¼SE¼, SE¼SW¼SE¼.
T. 16½ N., R. 13 W.,
Sec. 21, W½W½SE¼SE¼;
Sec. 28, NW¼NW¼NE¼NE¼, N½NE¼N W¼NE¼.
T. 16½ N., R. 15 W.,

Sec. 27, all;
Sec. 35, lots 1, 2, and 3, S½NE¼, E½NW¼, NW¼SW¼, W½SE¼.
T. 17 N., R. 13 W.,
Sec. 14, W½NE¼.
T. 17 N., R. 13 W.,
Sec. 14, W½NE¼.
T. 17 N., R. 14 W.,
Sec. 33, NE¼NW¼, S½NW¼, SW¼.

The area described comprises 3,483.445 acres in Mohave and Yavapai Counties.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-24908 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-09-4212-13; A-22625]

Exchange of Public and Private Lands in Mohave County; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Walter E. and Edna M. Biewer, The United States transferred 500.00 acres in Mohave County and in exchange accepted 3,866.55 acres, also in Mohave County.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Bureau of Land Management transferred the following described land by Deed Nos. AZ-88-013 and AZ-88-014, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 31, lot 5, E½, E½W½.

The area described comprises 500.00 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian

T. 14 N., R. 12 W.,
Sec. 5, S½;
Sec. 17, N½
T. 18 N., R. 17 W.,
Sec. 9, N½SW¼, SW¼SW¼.
T. 21 N., R. 17 W.,
Sec. 21, Lots 1 to 4, incl., W½E½, W½;
Sec. 27, N½, SE¼.
T. 23 N., R. 13 W.,
Sec. 3, lots 1 to 4, incl., SW¼NW¼, W¼SW¼, SE¼SW¼.
T. 27 N., R. 16 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½.
T. 28 N., R. 15 W.,
Sec. 17, west 1340 feet of lots 2, 3 and 4, W½.
T. 28 N., R. 16 W.,
Sec. 35, E½, E½NW¼, SW¼NW¼, SW¼.

The areas described aggregate 3,866.55 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

The surface of the land conveyed to the United States will be administered by the Bureau of Land Management. The mineral estate in the reconveyed land remains out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-24909 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-09-4050-91]

Area Closure, Headwaters Resource Area; Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure on public lands.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Jimmys Gulch Area, northwest of the Confederate Gulch Road in Sections 26, 27, 34 and 35, T. 10 N., R. 2 E., and Sections 3, 4 (SE1/4SE1/4) and 9 (E1/2NE1/4), T. 9 N., R. 2 E., P.M.M. are closed to all motorized vehicle uses. This area is located some 23 miles north of Townsend, Montana. The purpose of this closure is to prevent further soil erosion, vegetative losses, elk harassment, visitor safety risks, and user conflicts.

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702

Gary L. Gerth,

Acting District Manager.

October 13, 1988.

[FR Doc. 88-24988 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-DN-M

[AK-919-09-4213-02]

Northern Alaska Advisory Council; Meeting

A public meeting of the Northern Alaska Advisory Council will be held at the BLM's Fairbanks Office Building on Wednesday, December 7, 1988. The meeting will start at 8:30 a.m. and end at 5 p.m. Comments from the public will be accepted from 1 to 2 p.m.; written comments may be submitted.

During the meeting the Council will discuss the cumulative environmental impact statements for the drainages of the Fortymile River, the Minto Flats and the Birch and Beaver creek drainages; and for the military withdrawal lands of Fort Wainwright and Fort Greely. The Arctic, Kobuk and Steese/White Mountains districts will report on summer field activities and the Alaska Fire Service will discuss its Fire Crew Management Policy and the Wildfire Suppression Policy.

For information contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Donald E. Runberg,

Designated District Manager, Northern Alaska Advisory Council.

October 20, 1988.

[FR Doc. 88-24923 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-84-JA

[CA-940-08-4520-12; Group 956]

Plat of Survey; California

October 19, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lassen County

T. 31 N., R. 12 E.

2. This plat representing the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 19, 29, and 30, Township 31 North, Range 12 East, Mount Diablo Meridian, California, under Group No. 956 California, was accepted September 27, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–24910 Filed 10–27–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4520–12; Group 953]

Plat of Survey; California

October 19, 1988.

1. This plant of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Luis Obispo

T. 32 S., R. 22 E.

2. This plat representing the dependent resurvey of a portion of the subdivision of section 20, Township 32 South, Range 22 East, Mount Diablo Meridian, California, under Group No. 953 California, was accepted September 28, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Mangement, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–24911 Filed 10–27–88; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders; Correction

On Thursday, October 20, 1988, at 53 FR 41249 the List of Restricted Joint Bidders was published in the **Federal Register** as a matter of information to the public. The section below should read as follows:

Group VI. BP America, Inc.; Standard Oil Co.; Sohio Petroleum Co.; Standard Oil Production Co.; Standard Alaska Production Co.

William D. Bettenberg,

Director, Minerals Management Service.

Date: October 21, 1988.

[FR Doc. 88–24940 Filed 10–27–88; 8:45 am]

BILLING CODE 4310–MR–M

Cape Cod National Seashore; Bicycle Trail Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of bicycle trail plan.

SUMMARY: The National Park Service has prepared a Bicycle Trail Plan. The plan includes proposed trail locations throughout Cape Cod National Seashore.

With this Notice of Availability, the National Park Service is seeking comments on the plan before implementation.

DATE: Written comments will be accepted until December 27, 1988.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

DATE: October 6, 1988.

Herbert Olsen,

Superintendent, Cape Cod National Seashore

[FR Doc. 88–25016 Filed 10–27–88; 8:45 am]

BILLING CODE 4310–70–M

National Park Service

Meetings; Blackstone River Valley National Heritage Corridor Commission

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 3, 1988.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Blackstone Valley Regional Vocational Technical High School, Pleasant Street, Upton, Massachusetts, for the following reasons:

1. Review and approval of a FY 1989 budget.

2. Cultural Heritage and Land Management Plan status report.

3. Public Information and Education programs status report.

4. Status report on the Woonsocket Rubber Company Building Visitor Center, Woonsocket, Rhode Island.

It is anticipated that about twenty people will be able to attend the session, in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Lawrence D. Gall, Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, 21 Mendon Street, Uxbridge, Massachusetts 01569, Telephone (508) 278–9400.

Further information concerning this meeting may be obtained from Lawrence Gall, Interim Executive Director of the Commission, at the above address.

Lawrence D. Gall,

Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 88–25027 Filed 10–27–88; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, December 3, 1988 at the Grace Episcopal Church, 1041 Wisconsin Avenue, NW., Georgetown, DC.

The Commission was established by *Pub. L. 91–664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S. D. Marsh, Bethesda, Maryland
Mr. Keith A. Kirk, Hancock, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Colonel Ralph Albertazzie, Martinsburg, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC

Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
   Plans and Projects Committee
   Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: October 24, 1988.

Ronald N. Wrye,

Regional Director, National Capital Region.

[FR Doc. 88-25017 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

Farmington Wild and Scenic River Study, Massachusetts and Connecticut, Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that the first meeting of the Farmington River Study Committee will be held Monday, November 14, 1988.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The meeting will convene at 7:30 p.m. on the second floor of the Riverton Volunter Firehouse, Route 20, Riverton, Connecticut, for the following reasons:

1. Swearing in of Committee Members;
2. Review of Enabling Legislation, Study Concept and Components;
3. Discussion of Election of Committee Leadership and Establishment of By-Laws;
4. Establishment of Subcommittees;

It is anticipated that about ninety people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Steven H. Lewis,

Acting Regional Director.

Date: October 18, 1988.

[FR Doc. 88-25018 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area Advisory Commission; Meeting Cancellation

Notice is hereby given in accordance with the Federal Adivsory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission at 7:30 p.m. (PST) on Thursday, November 10, 1988, at Building 201, Fort Mason, San Francisco, California is cancelled.

Dated: October 7, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-25015 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Pursuant to the Interstate Commerce Act section 10524(b), the subsidiaries wholly owned by Beck/Arnley-World Parts Corp. are listed with the intent of participation in compensated intercorporate hauling operations.

The parent company and principal office of Beck/Arnley-World Parts Corp. is located at 1020 Space Park South, Nashville, Tennessee 37211. The participating subsidiaries are:

Name of corporation	State of incorporation
Beck/Arnley-World Parts Corp.	Tennessee.
Beck-Arnley Corp.	New York.
Beck-Arnley Corp.	California.
World Parts Corp.	Tennessee.
Products, Inc.	California.

B. 1. Parent corporation, address of principal office and State of incorporation: Crowley Maritime Corporation, 101 California, San Francisco, CA 94111-5875 (a Delaware corporation).

2. Wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices, and State(s) of incorporation:

i. Crowley Towing and Transportation Company, North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Louisiana corporation).

ii. Crowley Caribbean Transport, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (Delaware corporation).

iii. CTMT, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

iv. Crowley Maritime Salvage, Inc., 2401 Fourth Avenue, Seattle, WA 98111 (a California corporation).

v. Trailer Marine Transport Corporation, North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

vi. American Transport Lines, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

vii. American Transport Line, Ltd., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

viii. San Diego Transportation Company, 101 California, San Francisco, CA 94111-5875 (a California corporation).

ix. The Harbor Tug and Barge Company, 101 California, San Francisco, CA 94111-5875 (a California corporation).

x. Harbor Carriers, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

xi. H. Tourist, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

xii. Crowley Constructors, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

xiii. Pacific Alaska Fuel Service, Inc., 2401 Fourth Avenue, Seattle, WA 98121 (a Delaware corporation).

xiv. Puget Sound Tug and Barge Company (PST&B), 2401 Fourth Avenue, Seattle, WA 98121 (a Washington, corporation), and its d/b/a companies:

(a) PST&B d/b/a Shaughnessy & Company, Inc., 2401 Fourth Avenue, Seattle, WA 98121.

(b) PST&B d/b/a Alaska Hydro-Train, 2401 Fourth Avenue, Seattle, WA 98121.

(c) PST&B d/b/a United Transportation Company, 2401 Fourth Avenue, Seattle, WA 98121.

(d) PST&B d/b/a Pacific Alaska Lines—West, 2401 Fourth Avenue, Seattle, WA 98121.

(e) PST&B d/b/a APUTCO, 2401 Fourth Avenue, Seattle, WA 98121.

(f) PST&B d/b/a Arctic Marine Freighters, 2401 Fourth Avenue, Seattle, WA 98121.

(g) PST&B d/b/a Oilfield Services, 2401 Fourth Avenue, Seattle, WA 98121.

(h) PST&B d/b/a Arctic Lighterage Company, 2401 Fourth Avenue, Seattle, WA 98121.

(i) PST&B d/b/a Pacific Alaska Lines, 2401 Fourth Avenue, Seattle, WA 98121.

(j) PST&B d/b/a Hawaiian Marine Lines, 2401 Fourth Avenue, Seattle WA 98121.

xv. Pacific Northern Marine Corporation, 2401 Fourth Avenue, Seattle WA 98121 (a Washington corporation).

xvi. Crowley Environmental Services, Inc., 2401 Fourth Avenue, Seattle WA 98121 (a Delaware corporation).

xvii. Northwestern Construction, Inc., 2401 Fourth Avenue, Seattle WA 98121 (an Alaska corporation).

C. (1) Parent corporation and address of principal office: Dixie Aluminum Products Co., Inc., 422 Candler Street, Gainesville, GA 30501. (Dixie Aluminum Products Co., Inc. is a Georgia corporation).

(2) Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation: Sanders Sales, Inc., 422 Candler Street, Gainesville, GA 30501. (Sanders Sales, Inc. is incorporated under the laws of the State of Georgia and is 100% owned by Dixie Aluminum Products Co., Inc.).

D. 1 Parent corporation and address of principal office: Dixon Valve & Coupling Company, 800 High Street, Chestertown, Maryland 21620.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Buck Company, Inc. 897 Lancaster Pike, Quarryville, Pennsylvania 17566.

E. 1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Rockwood Office Park, Bldg. #1, 501 Carr Rd., Wilmington, DE 19809.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Buckeye Explosives, Inc., 314 Cross Street—P.O. Box 514, Dover, OH 44622, Incorporated—Ohio.

(ii) Atlanta Explosives, Inc., 114 McLarty Rd., Whitesburg, GA 30185, Incorporated—GA.

(iii) Beattie Explosives, Inc., Rt. 3—P.O. Box 15, Hayden Lake, ID 83835, Incorporated—ID.

(iv) Southern Explosives Corp., Oil City Road—P.O. Box 688, Glasgow, KY 42141, Incorporated—KY.

(v) Contract Carrier, Inc., W. County RD BB—P.O. Box 218, Greenfield, MO 65661, Incorporated—MO.

(vi) Keystone Explosives, Inc., Rt 536—P.O. Box 115, Punxsutawney, PA, Incorporated—PA.

(vii) Prater Explosives, 7654 Hancock, County RD 223, Findlay, OH 45840, A Corporation—OH.

(viii) King Explosives, Inc., 3341 Fitzgerald RD, P.O. Box 367, Ranch Cordova, CA 95741, Incorporated—CA.

(ix) DECO Services, Inc., dba, Danbury Explosives, 107 Danbury Road, New Milford, CT 06776, A corporation—CT.

(x) Explosives Energy Inc., dba Arkansas Explosives, 10711 Otter Creek East Blvd., Mablevale, AR 72103, Incorporated—AR.

F. 1. Parent corporation and address of principal office: Universal Petroleum Products, Inc., P.O. Box 1268, Burlington, NJ 08016.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of incorporation: Name and Jurisdiction Where Incorporated

(a) Enzie Transport, Inc., a New Jersey Corporation

Noreta R. McGee,

Secretary.

[FR Doc. 88-24959 Filed 10-21-88; 8:45 am]

BILLING CODE 7035-01-M

ICC Senior Executive Service Performance Review Board

October 19, 1988.

The purpose of this Notice is to designate a change in the membership of the ICC Senior Executive Service Performance Review Board (PRB).

John F. Hennigan, Jr., Director, Office of Transportation Analysis, has been appointed as an alternate member of the Performance Review Board; Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24960 Filed 10-27-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31340]

Wisconsin and Calumet Railroad Company, Inc. Modified Rail Certificate, Notice

On September 21, 1988, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate indefinitely, beginning on September 21, the following rail lines in Wisconsin: between Lone Rock (milepost 0.26) and Richland Center (milepost 16.4), a distance of 16.14 miles; between Middleton (milepost 146.72) and Prairie du Chien (milepost 237.4) excluding trackage between milepost (233.75 and milepost 233.59), a distance of 90.52 miles; and between Mazomanie (milepost 0.07) and Prairie du Sac (milepost 13.07), a distance of 13 miles.

Prior to abandonment, the lines were owned and operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). The Commission authorized abandonment of the line between Middleton and Prairie du Chien in Docket No. AB-7 (Sub-No. 83) *Chicago, M. St. P., & Pac. R. Co.-Aband.-Betw. Lone Rock and Prairie Du Chien WI* (not printed), served February 28, 1980. The Commission authorized abandonment of the line between Lone Rock and Richland Center and between Mazomanie and Prairie du Sac in in Docket No. AB-7 (Sub-No. 99), *Chicago, M. ST. P., & Pac. R. Co.-Aband.-Middleton Richland Center, WI* (not printed), served May 6, 1982.

The rail lines were acquired from MILW by the State of Wisconsin acting through the WRRTC and the Wisconsin Department of Transportation. A previous operator of the involved lines became bankrupt and discontinued operations.

This notice must be served on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: October 20, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24849 Filed 10-27-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labor Organization

AGENCY: Department of Labor.

ACTION: Request for comment from tribal governments.

SUMMARY: The Department of Labor invites comments from tribal governments on the appended proposed revision of the International Labor Organization's (ILO) Indigenous and Tribal Populations convention, 1957 (No. 107). In response to an ILO request, the Bureau of International Labor Affairs of the Department of Labor, with the assistance of the relevant Federal agencies, will prepare comments on the proposed text. The ILO will then incorporate comments of Member States into a second draft of the proposed revised convention. Comments from tribal governments on the draft will be sought in early 1989 as soon as it becomes available.

DATE: Due to the ILO response deadline, comments of tribal governments must be received on or before November 21, 1988 to receive consideration in formulating the United States response. A new ILO draft text for the proposed revised convention will be published after Governments make their responses.

ADDRESS: Written comments should be directed to Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S-5311, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, Department of Labor, Washington, DC 20210, telephone number (202) 523-6241.

SUPPLEMENTARY INFORMATION: In June 1988, the annual Conference of the International Labor Organization (ILO) held the first of two annual discussions of the Partial Revision of a Convention (No. 107), which the Conference adopted in 1957, on Indigenous and Tribal Populations. The existing Convention deals with a wide range of issues such as native land rights, consultation between governments and native peoples in social and economic development, and issues of employment, vocational training, health and education affecting tribal peoples. The Convention is being revised because its assimilationist or integrationist approach to fundamental issues is widely seen as inappropriate and outdated. The OLO has issued the report of the June 1988 session of the Conference Committee on Convention No. 107 and a proposed text based on the results of the meeting. The ILO has requested that Governments submit amendments or comments on the proposed text. These comments will be incorporated into a second draft of the proposed revised convention, which will be considered at the June 1989 session of the Committee. The Bureau of International Labor Affairs of the Department of Labor, with the assistance of the Departments of Interior and State, will prepare comments for the ILO. The Department of Labor invites comments from tribal governments on the proposed revised Convention. The revised Convention is intended to be a broad statement of principles that can be adopted by many countries whose indigenous and tribal peoples face a wide range of circumstances and conditions. Comments will be sought again in early 1989 as soon as the second ILO draft becomes available.

Signed this 26th day of October 1988.

Eugene K. Lawson,

Deputy Under Secretary for International Affairs, U.S. Department of Labor.

APPENDIX

PROPOSED TEXT

The text of a proposed Convention concerning indigenous and tribal peoples (or populations) in independent countries will be found below. This text is based on the conclusions adopted by the International Labor Conference at its 75th Session.

Reference should also be made to the report of the Committee appointed by the Conference to consider this item. In a departure from past practice, this report is not summarised in the present volume but is being communicated to member States in its entirety, together with the record of the discussion in plenary session (see *Provisional Record* No. 32 and No. 36 attached).

Only a very small number of changes from the Conclusions adopted by the Conference are included in the text of the proposed Convention, mostly for editorial reasons. Where necessary, they are discussed below. Special attention is drawn in this respect to the discussion below of the Part of the text dealing with land rights.

Proposed Convention

Preamble

The text of a draft Preamble is being submitted for the first time. It appears appropriate to refer in particular to the development of international human rights law since Convention No. 107 was adopted in 1957, as well as to other developments which affect indigenous and tribal peoples more directly. The reference to the co-operation of other international organizations is taken from Convention No. 107, with the addition of a reference to the Inter-American Indian Institute in view of the valuable collaboration which has been taking place with that organization.

Article 1

The use of the term "(peoples/populations)" reflects an agreement in the Committee that the question could not be satisfactorily resolved during the 75th Session; reference is made to paragraphs 30 to 39 of the report of the Committee. There did appear to be widespread, though not universal, agreement that the term "peoples" should be used if an acceptable formula could be found to ensure that it did not imply rights beyond the scope of the revised Convention, in particular with regard to self-determination in the sense of separation from the State.

Part II. Land

The test of the proposed Convention is taken directly from the Proposed Conclusions contained in Report VI (2) submitted to the 75th Session of the Conference. Following its referral to a working party and a general discussion in the Conference Committee, this subject was set aside for more detailed consideration at the 76th Session. The text of the proposed Convention thus does not reflect either the agreements which were reached on similar language in respect of other parts of the Conlusions, or the elements of agreement which appeared to emerge during the working party's discussions. Governments and other respondents may therefore wish to take the following considerations into account in pareparing their comments.

Lands/territories. A discussion was held in the working party on this issue which is not fully reflected in the Committtee's report but which may assist in clarifying the issues raised. Two basic positions became apparent. First, the indigenous and tribal representatives, supported by the Workers' members and some

governments, felt that the word "lands" is too restrictive and does not express the relationship between these peoples and the territories they occupy. Nor, on a purely practical level, does the word "lands" cover elements such as sea ice for the northern peoples, which are parts of their territories but are not land. It also does not reflect other elements which are inherent in their concept of territory, such as the flora and fauna, waters and the environment as a whole. On the other hand, a number of governments and the Employers' members pointed out that some internal legal systems are based on the concept of lands and not territories, at least where the acquisition of enforceable rights is concerned. Furthermore, the word "territories" is used in many national legal texts only to refer to the national territory as a whole, and its use in this context might raise problems in connection with national sovereignty.

While this issue remains to be explored fully at the 76th Session of the Conference, the Office points out that both terms were already used in Part II of Convention No. 107 and that no problems have arisen in interpreting them since 1957. It appears that the issues raised during the Conference discussion might be resolved if the word "lands" were used in connection with the establishment of legal rights, while "territories" could be used when describing a physical space, when discussing the environment as a whole or when discussing the realtionship of these peoples to the territories they occupy.

Ownership, possession or use. Some consensus appeared to be emerging to use this expression uniformly instead of more limited expressions such as "rights of ownership and possession" (Article 13 of the proposed Convention).

Seek the consent. The use of this phrase in the Proposed Conclusions (see especially Proposed Conclusion 30) evoked considerable concern among some delegates that the right of States to take final decisions on the disposition of the national territory was being called into question. In fact, it was meant to indicate that a serious attempt should be made to obtain the consent of the inhabitants of the areas concerned before undertaking activities which affected them. There was no intention to imply a veto power and no implication that the State's power to decide be limited. It should be noted that the continued use of this phrase in Article 14, paragraph 2, of the proposed Convention derives from the Committee's decision to use the corresponding text of the Proposed Conclusions without modification as the basis for the proposed Convention. Moreover, where this phrase was used in another part of the Proposed Conclusions, it was modified by the Committee to "consult fully" (see Article 6*(a)* of the proposed Convention).

Surface ans subsoil resources. While these phrases were used in the Proposed Conclusions, some consensus appeared to be emerging in the working party to use instead the concepts of renewable and non-renewable resources. Respondents may wish to take this into account in framing their comments.

Proposed new Point

Attention is drawn to paragraphs 216 and 217 of the Conference Committee's report, where a proposed new Point concerning indigenous and tribal peoples in frontier areas is discussed. While no new Article is included in the text of the proposed Convention, the Office will examine the question more fully for the final report to be put before the Conference. It is pointed out that an obligation for two States, each of which has ratified a given Convention, to conclude agreements between themselves to regulate the matters covered in the Convention is well established in ILO standards. Reference may also be made to Part X of Recommendation No. 104.

Proposed Convention Concerning Indigenous and Tribal (Peoples/Populations) in Independent Countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal (peoples/populations) in all regions of the world, have made it appropriate to adopt new international standards on the subject, and

Recognising the aspirations of these (peoples/populations) to control over their own institutions, ways of life and economic development, whithin the framework of the States in which they live, and

Noting that in many parts of the world these (peoples/populations) have been unable to enjoy their fundamental human rights to the same degree as the rest of the populations of the States within which they live, and

Calling attention to the vital contributions of indigenous and tribal traditions to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following standards have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these standards, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal (Peoples/Populations) Convention (Revised), 1989:

Part I. General Policy

Article 1

1. This Convention applies to:

(a) tribal (peoples/populations) in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) (peoples/populations) in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of

conquest or colonisation and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The indigenous and tribal (peoples/populations) mentioned above are referred to hereinafter as "the (peoples/populations) concerned".

Article 2

1. Governments shall have the responsibility for developing, with the full participation of the (peoples/populations) concerned, co-ordinated and systematic action to guarantee respect for the integrity of these (peoples/populations) and their rights.

2. Such action shall include measures for:

(a) enabling member of these (peoples/populations) to benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these (peoples/populations) with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the (peoples/populations) concerned to raise their standard of living to that enjoyed by other members of the national community, in a manner compatible with the aspirations and ways of life of these (peoples/populations).

Article 3

1. Indigenous and tribal (peoples/populations) shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the (peoples/populations) concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the institutions, persons, property, labor and environment of the (peoples/populations) concerned.

2. Such special measures of protection shall not be contrary to the wishes of the (peoples/populations) concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.

Article 5

In applying the provisions of this Convention:

(a) due account shall be taken of the cultural and religious values and practices of these (peoples/populations), and of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these (peoples/populations) shall be respected;

(c) policies aimed at mitigating any difficulties experienced by these (peoples/populations) in adjusting to new conditions of life and work shall be adopted, with the full participation and co-operation of the (peoples/populations) affected.

Article 6

In applying the provisions of this Convention, governments shall:

(a) consult fully the (peoples/populations) concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these (peoples/populations) may freely participate at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which may affect them directly;

(c) make available to these (peoples/populations) opportunities and resources for the full development of their own institutions and initiatives.

Article 7

1. The improvement of the conditions of life and work and level of education of the (peoples/populations) concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas inhabited by them. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

2. The (peoples/populations) concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, territories, institutions and spiritual well-being and to exercise control, to the extent possible over their own economic, social and cultural development. In addition, they shall be involved in the formulation and implementation of plans and programmes for national and regional development which may affect them directly.

3. Governments shall ensure that studies are carried out, in collaboration with the (peoples/populations) concerned, to assess the social, spiritual, cultural and environmental impact of planned development activities on them.

Article 8

1. In the application of national laws and regulations to the (peoples/populations) concerned, due regard shall be had to their customary laws.

2. These (peoples/populations) shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or with internationally recognised human rights.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these (peoples/populations) from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the (peoples/populations) concerned for dealing with crimes or offences committed by their members shall be respected.

2. The customs of these (peoples/populations) in regard to penal matters shall be take into consideration by the authorities and courts dealing with such cases.

Article 10

The exaction from the members of the (peoples/populations) concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 11

1. In imposing penalties laid down by general law on members of these (peoples/populations) account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 12

The (peoples/populations) concerned shall be safeguarded against the abuse of their fundamental rights and shall be able to take legal proceedings for the effective protection of these rights. Members of these (peoples/populations) shall have the right to use their own languages in any legal proceedings.

Part II. Land*

Article 13

1. The rights of ownership and possession of the (peoples/populations) concerned over the lands which they traditionally occupy shall be recognised.

2. Governments shall take steps as necessary to identify the lands which the (peoples/populations) concerned traditionally use and occupy, and to guarantee effective protection of their rights of ownership and possession.

Article 14

1. Special measures shall be taken to safeguard the control of the (peoples/populations) concerned over natural resources pertaining to their traditional territories, including flora and fauna, waters and sea ice, and other surface resources.

2. Governments shall seek the consent of the (peoples/populations) concerned, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Fair compensation shall be provided for any such activities undertaken within the territories of the said (peoples/populations).

Article 15

1. Subject to the following paragraphs of this Article, the (peoples/populations) concerned shall not be removed from their habitual territories.

2. Where the removal of the said (peoples/populations) is considered necessary as an exceptional measure, such removals shall take place only with their free and informed consent. Where their consent cannot be obtained, such removal shall take place only following appropriate procedures established by national laws and regulations, including public inquiries, which provide the opportunity for effective representation of the (peoples/populations) concerned.

3. In such exceptional cases of removal, these (peoples/populations) shall be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist, and where the (peoples/populations) concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

4. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 16

1. Procedures for the transmission of rights of ownership, possession and use of land which are established by the customs of the (peoples/populations) concerned shall be respected, within the framework of national laws and regulations.

2. The consent of the (peoples/populations) concerned shall be sought when considering the adoption of national laws or regulations concerning the capacity of the said (peoples/populations) to alienate their land or otherwise transmit rights of ownership, possession and use of their land.

3. Persons who are not members of these (peoples/populations) shall be prevented from taking advantage of the customs referred to in paragraph 1 of this Article or of lack of understanding of the laws on the part of the members of these (peoples/populations) to secure the ownership, possession or use of land belonging to them.

Article 17

Unauthorised intrusion upon, or use of, the lands of the (peoples/populations) concerned shall be considered an offence. Adequate penalties for such offences and appropriate recourse procedures shall be established by law.

Article 18

National agrarian programmes shall secure to the (peoples/populations) concerned treatment equivalent to that accorded to other sections of the national community with regard to:

(a) the provision of more land for these (peoples/populations) when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers.

(b) the provision of the means required to promote the development of the lands which these (peoples/populations) already possess.

Article 19

Adequate procedures shall be established within the national legal system to resolve land claims by the (peoples/populations) concerned, including claims arising under treaties.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in full co-operation with the (peoples/populations) concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these (peoples/populations), to the extent they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the (peoples/populations) concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers organizations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the (peoples/populations) concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors;

(b) that workers belonging to these (peoples/populations) are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these (peoples/populations) are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

*Part II of this proposed Convention is based directly on the Proposed Conclusions contained in Report VI(2) to the 75th Session of the Conference. In preparing comments on this Part, please refer to the relevant section of the Office commentary (*Provisional Record* No. 32) to the general discussion of this subject contained in paragraphs 125–136 of the Conference Committee's report.

(d) that workers belonging to these (peoples/populations) enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment;

(e) that workers belonging to these (peoples/populations), including seasonal and migrant workers employed in agriculture or in other activities, are fully informed of their rights under labour legislation and of the means of redress available to them.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the (peoples/populations) concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational Training Handicrafts and Rural Industries

Article 21

Members of the (people/populations) concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the (peoples/populations) concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the (peoples/populations) concerned, governments shall, with the full participation of these (peoples/populations), ensure the provision of special training programmes and facilities.

3. Any special training facilities shall be based on the economic environment, social and cultural conditions and practical needs of the (peoples/populations) concerned. And studies made in this connection shall be carried out in co-operation with these (peoples/populations), who shall progressively assume responsibility for the organization and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the (peoples/populations) concerned, such as hunting, fishing, trapping and gathering, shall be recognised, strengthened and promoted as important factors in their economic development. The integrity of these traditional activities shall be protected.

2. Upon the request of the (peoples/populations) concerned, appropriate technical and financial assistance shall be provided, taking into account traditional technologies and the cultural characteristics of these (peoples/populations), as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24

Social security schemes shall be extended progressively to cover the (peoples/populations) concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are make available to the (peoples/populations) concerned, or shall provide them with resources to allow them to design and deliver services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the (peoples/populations) concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall, to the extent possible, allow for the training and employment of local community health workers, and focus on primary health care while maintaining strong links to other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country, with the full participation of the (peoples/populations) concerned.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the (peoples/populations) concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the (peoples/populations) concerned shall be developed and implemented in collaboration with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these (peoples/populations) and their involvement in the formulation and implementation of education programs, with a view to the progressive transfer of responsibility for the conduct of these programmes to these (peoples/populations).

3. In addition, governments shall recognise the right of these (peoples/populations) to establish their own educational institutions and facilities. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the (peoples/populations) concerned shall be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as decided by these (peoples/populations).

2. Adequate measures shall be taken to ensure that these (peoples/populations) have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Effective measures shall be taken to preserve and promote the development and practice of the indigenous languages of the (peoples/populations) concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the (peoples/populations) concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these (peoples/populations).

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the (peoples/populations) concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these (peoples/populations).

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among

those that are in most direct contact with the (peoples/populations) concerned, with the object of eliminating prejudices that they may harbour in respect of these (peoples/populations). To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these (peoples/populations).

Part VII. Administration

Article 32

1. The governmental authority responsible for the matters covered in this Convention shall create or develop agencies or other appropriate mechanisms to administer the programmes affecting the (peoples/populations) concerned, and provide them with the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) planning co-ordination, execution and evaluation, in co-operation with the (peoples/populations) concerned, of the measures provided for in this Convention;

(b) proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken in full co-operation with the (peoples/populations) concerned.

Part VIII. General Provisions

Article 33

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 34

The application of the provisions of this Convention shall not adversely affect rights and benefits of the (peoples/populations) concerned pursuant to other Conventions and Recommendations, under treaties or international instruments, or under national laws, awards, custom or agreements.

Part IX. Final Provisions

Article 35

This Convention revises the Indigenous and Tribal Propulations Convention, 1957.

[FR Doc. 88-25056 Filed 10-27-88; 8:45 am]
BILLING CODE 4510-28-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "Geneal Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY88-4 (Jan. 8, 1988) ..... pp. 712-716.
Pennsylvania:
PA88-7 (Jan. 8, 1988) ..... pp. 902-904, 908.
PA88-10 (Jan. 8, 1988) ..... p.930.
PA88-23 (Jan. 8, 1988) ..... pp. 1000-1004.
PA88-24 (Jan. 8, 1988) ..... pp. 1006-1008.

Volume II

Illinois:
IL88-1 (Jan. 8, 1988) ..... p. 75.
Ohio:
OH88-1 (Jan. 8, 1988) ..... pp. 724-727.
OH88-2 (Jan. 8, 1988) ..... pp. 738-740, pp. 742-746.
OH88-3 (Jan. 8, 1988) ..... pp. 758-763.
OH88-28 (Jan. 8, 1988) ..... pp. 814-817.
OH88-29 (Jan. 8, 1988) ..... pp. 820-825, pp. 827-829, pp. 831-832, 838.

Volume III

Oregon:
OR88-1 (Jan. 8, 1988)..... p. 302.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered from any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of October, 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-24719 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-27-M

Bureau of Labor Statistics

Response to Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: .Changes in local area unemployment statistics methodology.

SUMMARY: As a result of the comments received during the Federal Register comment period, the Bureau of Labor Statistics has confirmed its intention to introduce the new method of estimating statewide labor force, employment, unemployment, and unemployment rate cited in its **Federal Register** notice, published June 17, 1988 at 53FR 22749. The new method includes the mandatory use of regression models for the District of Columbia and the 39 States which do not use the Current Population Survey estimates directly each month. The new method will be indroducted beginning with data for January 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Brown 202-523-1038.

Dated at Wahington, DC, this 21st day of October 1988.

Janet L. Norwood,

Commissioner.

[FR Doc. 88-24921 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-24-M

[Docket No. M-88-185-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Orient No. 6 Mine (I.D. No. 11-00599) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by 950-volt, a.c. electricity. The circuit breakers and cables used in this medium-voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high-current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low- or medium-voltage systems, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that needs to be done and results in a diminution of safety to miners.

4. As an alternate method, petitioner proposes that throughout the mine, 2400-volt a.c. electricity would be used to power longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific equipment and conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24917 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-88-190-C]

Kinney Branch Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kinney Branch Coal Company, Inc., P.O. Box 166, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine (I.D. No. 15-15921) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 3 Elkhorn seam and ranges from 36 to 60 inches in height with ascending and descending grades.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would limit the equipment operator's visibility and seating position resulting in cramped conditions, fatigue, and reduced safety.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24918 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-188-C]

Meadow River Co.; Petition for Modification of Application of Mandatory Safety Standard

Meadow River Company, Box 75, Lookout, West Virginia 25868 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Meadow River Mine (I.D. No. 46-03467) located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that as safety considerations permit, abandoned areas be examined on a weekly basis.

2. Petitioner states that due to adverse roof conditions an abandoned area of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish evaluation check points to examine the abandoned area for hazardous conditions.

4. In support of this request, petitioner states that the proposed evaluation check points would be examined by a certified person and a record of each examination would be recorded in an approved book.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24919 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-196-C]

W&D Coal Co., Inc; Petition for Modification of Application of Mandatory Safety Standard

W&D Coal Company, Inc., P.O. Box 82, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-16369) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintaned and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24920 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Wyoming State Standards: Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Wyoming standard: Multi-piece rim and single-piece rim wheels.

SUMMARY: This notice approves Wyoming's standard for Multi-Piece Rim and Single-Piece Rim Wheels, submitted on April 10, 1984, in response to a Federal program change under 29 CFR 1953.21. Wyoming's standard for Multi-Piece Rim and Single-piece Rim Wheels is substantively different from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.177. The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture, construction, or maritime. Where a State standard adopted pursuant to an OSHA-approved

State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" as the Federal standard. In addition, if a different standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On July 15, 1988, OSHA published a **Federal Register** notice (53 FR 26797) requesting public comment on both the "at least as effective" criterion as well as the "product clause test" in section 18(c)(2) of the Act. This notice invited interested persons to submit by August 15, 1988, written comments and views regarding the Wyoming standard and whether it should be approved by the Assistant Secretary. In response to this notice, OSHA did not receive any comments.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1954.21, .22, and .23. OSHA regulations (29 CFR 1953.23(a)(1)) require that States respond to the adoption of new or revision permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**. A 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Occupational Health and Safety Department either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and Federal OSHA rule-making requirements.

The Federal standard for Multi-Piece Rim and Single-Piece Rim Wheels was promulgated on February 3, 1984 (49 FR 4338). After public input, the Wyoming Health and Safety Commission adopted a standard for Multi-Piece Rim and Single-Piece Rim Wheels on May 18, 1984. The standard became effective on July 27, 1984. By letter dated April 10, 1984, with attachments, from Donald D. Owsley, former Administrator, Wyoming Occupational Health and Safety Department, to Byron Chadwick, OSHA Regional Administrator, the State submitted the standard (Safety rules and regulations for General Industry as required by Wyoming Statute 1977, section 27–11–105 (a)(viii)) and incorporated the revision as part of its occupational health and safety plan.

B. Public Participation

A **Federal Register** notice requesting public comment on both the "at least as effective" criterion as well as the "product clause test" of section 18(c)(2) of the Act was published on July 15, 1988 (53 FR 26797). This notice invited interested persons to submit by August 15, 1988, written comments and views regarding the standard for Wyoming Multi-Piece Rim and Single-Piece Rim Wheels and whether it should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standard is applicable to products which are distributed or used in interstate commerce, is required by compelling local conditions, and unduly burdens interstate commerce. In response to the July 15, 1988 **Federal Register** notice, OSHA received no comments.

C. Decision

Having reviewed the State submission and having received no objections to the approval of standard, OSHA has determined that:

(1) The Wyoming standard for multi-piece rim and single-piece rim wheels is at least as effective as the Federal standard.

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard amendment is not in compliance with the "product clause test" of section 18(c)(2) of the Act. OSHA therefore approves the Wyoming standard for multi-piece rim and single-piece rim wheels.

D. Location of Supplement for Inspection and Copying

A copy of the Wyoming Standard on Multi-Piece Rim and Single-Piece Rim Wheels, along with approved State provisions for adoption of standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736).

Signed this 21st day of October 1988, in Washington, DC.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–24942 Filed 10–27–88; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–91)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: November 17, 1988, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226–A, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 26 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

November 17, 1988

9 a.m.—Introduction.
9:10 a.m.—Committee Reports.
10 a.m.—Space Station International Agreements.
11 a.m.—National Research Council Space Policy Study.
1 p.m.—Discussion.
5 p.m.—Adjourn.

October 24, 1988.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 88–24927 Filed 10–27–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Design Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Design Arts Advisory Panel (Individuals Section) to the National Council on the Arts will be held on November 16–17, 1988, from 9:00 a.m.–5:30 p.m.; and on November 18, 1988, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 18, from 2:30–5:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on November 16 and 17 from 9:00 a.m.–5:30 p.m.; and on November 18 from 9:00 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Mangement Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

October 24, 1988.

Yvonne M. Sabine,

Director Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–24993 Filed 10–27–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498]

Houston Lighting & Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operation License No. NPF–76, issued to the Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 169 fuel assemblies to 1969 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated March 8, 1988 as supplemented March 26, 1988. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. NPF–76, Houston Lighting & Power Company, South Texas Project, Unit 1, Docket No. 50–498, dated October 18, 1988.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For the South Texas Project, Unit 1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 mrem/year; the estimated dose to the population within an 80 kilometer radius is estimated to be less than 0.1 person-rem/year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less

than three percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected. The increase in total plant waste heat is less than 0.01%. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Findings of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated March 8, 1988 as supplemented on March 26, 1988; and additional information provided by the licensee in letters dated August 9, 10, 19, 30 and September 21, 22, and 29, 1988, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for South Texas Project, Units 1 and 2, dated August 1986, and (4) the Environmental Assessment dated October 18, 1988.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555 and at the Wharton Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 18th day of October 1988.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24957 Filed 10–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Company; San Diego Gas and Electric Company; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to replace the core average burnup limit with a limit on moderator temperature coefficient, to incorporate more frequent correlation of excore axial offset, and revise the formula for incore axial offset.

The Need for the Proposed Action

The proposed amendment is required to allow reactor operation to be based directly on the limiting value of moderator temperature coefficient and facilitate closer surveillance of incore flux distribution.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1988 (53 FR 25713). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 31, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24956 Filed 10–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Exemption

I

The Northern States Power Company (NSP, the licensee) is the holder of Facility Operating License No. DPR-22, which authorizes operation of the Monticello Nuclear Generating Plant (Monticello) at a steady-state power level not in excess of 1670 megawatts thermal. The plant is a boiling water reactor located at the licensee's site in Wright County, Minnesota. The license provides, among other things, that Monticello is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for containment integrated leakage rate tests (CILRTS) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the Commission's staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4-1972.

III

By letter dated August 1, 1988, as supplemented by letter dated August 23, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4-1972. ANSI N45.4-1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method.

The licensee indicated that since the issuance of ANSI N45.4-1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as described in ANSI/ANS-56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment leakage rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are referenced in ANSI N45.4-1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least squares fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

On February 29, 1988 (53 FR 5985), the Commission published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the Commission's staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4-1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with Section 7.6 of ANSI N45.4-1972, a test duration of less than 24 hours is only allowed if approved by the Commission, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN-TOP-1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the Commission conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated August 23, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the August 1, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Monticello pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limited specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The Commission's staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated August 1, 1988, as revised by letter dated August 23, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rates (by use of the Mass Point method) and not to any other aspects of the tests.

IV.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a)(1), that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations, providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (October 4, 1988, 53 FR 38994).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 21st day of October 1988.

[FR Doc. 88-24958 Filed 10-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 9999004; ASLBP No. 89-582-01-SC]

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Co. and John P. Larsen; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company and John P. Larsen

General License Authority of 10 CFR 40.22

E. A. 87-223

This Board is being established pursuant to the request of Mr. John P. Larsen for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated August 15, 1988, entitled "Order Revoking Licenses."

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 24th day of October 1988.

[FR Doc. 88-24955 Filed 10-27-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272-21412.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision.

Form 144.

File No. 270-112.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to Rule 144 (17 CFR 230.144), which will alter the manner in which the holding period for restricted securities is calculated. The amendments should reduce the number of filings on Form 144, which is a notification of resale of securities without registration in reliance on Rule 144. With respect to Form 144 approximately 34,818 respondents are affected and an estimated 2 burden hours are required per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

October 25, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24938 Filed 10-27-88; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

New

Rule 144A

File No. 270-322.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Rule 144A which provides a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of securities to specified institutional investors. The Rule is not a form but would cause reductions in Forms S-1, S-2, S-3, S-4, S-11, S-18, F-1, F-2, F-3, F-4, 10-K, 10-Q, 8-K, 20-F and 6-K.

Direct general comments to Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228,

New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 25, 1988.

[FR Doc. 88-25006 Filed 10-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16607; File No. 812-7095]

Application for Exemption; Acacia Capital Corp. et. al.

October 24, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Acacia Capital Corporation ("Fund"), Acacia National Variable Life Insurance Account B, and certain life insurance companies and variable life insurance separate accounts (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed August 11, 1988, and amended on October 11, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issue you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Acacia Capital Corporation and Acacia National Variable Life Insurance Account B, 51 Louisiana Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund currently consists of eight series. Additional series may be added in the future. Shares of the Fund currently are offered only to the separate accounts of the Acacia National Life Insurance Company, for the purpose of funding variable annuity and variable life contracts.

2. The Fund intends to offer shares of its existing and future series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). Insurance companies whose separate account(s) now owns or, in the future, will own, shares of the Fund are referred to herein as "participating insurance companies." The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rule 6e-2(b)(15) precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicants have requested exemptive relief to the extent necessary to permit shares of the Fund to be sold for mixed funding and shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life insurance separate accounts investing in the Fund (and principal underwriters and depositors of such accounts).

4. Applicants state that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also state that granting the requested relief should result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new series of the Fund more feasible. Applicants state that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product. Applicants believe that mixed and shared funding will have no adverse federal income tax cosequences.

Disqualification

5. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

6. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 in effect limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. The application states that it is unnecessary to apply section 9(a) to the many thousands of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts. The application states that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. Applicants state that the increased monitoring costs would reduce the net rates of return realized by contract owners.

7. The relief provided by Rule 6e-2(b)(15) (i) and (ii) and Rule 6e-3(T)(b)(15) (i) and (ii) is requested only for participating insurance companies and their affiliated persons who do not participate in management or administration of the Fund. Certain affiliated persons of Acacia National Life Insurance Company may participate in the management or administration of

the Fund and the Fund does not request an exemption in regard to such persons.

Voting

8. The application states that the language of Rules 6e–2(b)(15)(iii) and 6e–3(t)(b)(15)(iii) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

9. The application states that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. The application states that the rights of an insurance company or of a state insurance regulator to disregard contract owners' voting instructions are not inconsistent with mixed funding of different insurance products or shared funding by unaffiliated insurers.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with Section 16(c) of the Act (although the Fund is not one of the trusts described in Section 16(c) of the Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, Calvert Asset Management Company ("Adviser"), will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Directors of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners. For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other

participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund. Participating insurance companies will vote shares, for which they have not received voting instructions as well as shares attributable to them in the same proportion as they vote shares for which they have received instructions.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–25007 Filed 10–27–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to discuss agenda items of the upcoming 15th Session of the United Nations Committee of Experts on the Transport of Dangerous Goods.

DATE: November 29, 1988, 9:30 a.m.

ADDRESS: Room 3442, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be conducted jointly with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council to discuss items that will be presented to the United Nations Committee of Experts on the Transport of Dangerous Goods during the 15th Session to be held December 5 to 14, 1988. Topics to be covered include: (1) Final approval of revisions to the Recommendations on the Transport of Dangerous Goods, Chapter 10; (2) Special Recommendations on Packing for Class 1; (3) adoption of a new Test Series 7 for explosives; (4) adoption of a new Division 1.6 and Compatibility Group N for explosives; (5) adoption of the definition and classification of aerosols; (6) revision of the classification and grouping criteria for gases; (7) adoption of a generic classification system for organic peroxides; and (8) other proposals for amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

Issued in Washington, DC, on October, 21, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–25020 Filed 10–27–88; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0192.

Form Number: ATF REC 5110/02—ATF F 5110.11.

Type of Review: Extension.

Title: Distilled Spirits Plants Warehousing Records and Reports.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel plus provide for economic analysis.

Respondents: Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 234.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 5,616 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–24924 Filed 10–27–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A and 4461–B.

Type of Review: Revision.

Title: 1. Application for Approval of Master or Prototype Defined Benefit Plan. 2. Application for Approval of Master or Prototype Defined Contribution Plan. 3. Application for Approval of Master or Prototype Plan Mass Submitter Adopting Sponsor.

Description: IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application also is used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response:

	4461	4461–A	4461–B
Recordkeeping	40 hrs/53 mins	42 hrs/34 mins	6 hrs/42 mi.
Learning about the law or the form	4 hrs/50 mins	4 hrs/32 mins	1 hr/10 min.
Preparing the form	6 hrs/39 mins	6 hrs/22 mins	2 hrs/16 mi.
Copying, assembling, and sending the form to IRS	16 mins	16 mins	16 mins.

Frequency of Response: On occasion (The forms are normally filed only once.)

Estimated Total Reporting Burden: 125,828 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88–24925 Filed 10–27–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 24, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0173.

Form Number: IRS Form 4563.

Type of Review: Resubmission.

Title: Exclusion for Income for Residents of American Samoa.

Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response:

Recordkeeping—33 minutes

Learning about the law or the form—5 minutes

Preparing the form—25 minutes

Copying, assembling, and sending the form to IRS—17 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 135 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–24926 Filed 10–27–88; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

[T.D. 88–67]

Rescinded Notice of Broker Permit Revocation, George S. Bush & Co., Inc., Portland, OR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that George S. Bush & Co., Inc., of Portland, Oregon was erroneously included on the list of Customs broker permits revoked by action of law which was published in the **Federal Register** on July 11, 1988 (53 FR 27126), and in the Customs Bulletin on July 20, 1988, Vol. 22, No. 29 as T.D. 88–39.

To the best of our knowledge George S. Bush & Co., Inc., (Portland), has never possessed a broker permit for San Francisco, and has never conducted Customs business in that district.

Dated: October 13, 1988.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 88–24966 Filed 10–27–88; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

[Dept. Cir.—Public Debt Series—No. 27–88]

Treasury Notes of October 31, 1990, Series AG–1990

Washington, October 20, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites

tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of October 31, 1990, Series AG–1990 (CUSIP No. 9128227 WU 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1988, and will accrue interest from that date, payable on a semiannual basis on April 30, 1989, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 26, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 25, 1988, and received no later than Monday, October 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public intrest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, October 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 27, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, October 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary. e

[FR Doc. 88-25031 Filed 10-26-88; 10:49 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, page 41645, October 24, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: October 26, 1988.

CHANGES: Date of meeting changed to October 28, 1988 and previous item 4 concerning the compliance status report is deleted. Outside participants added to item 3. Agenda as revised listed below.

TIME AND DATE: 10:00 a.m., Friday, October 28, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

Open to the Public

1. ATV Voluntary Standard

The Commission will consider the proposed voluntary standard for all-terrain vehicles developed under the provisions of the Consent Decrees in *United States v. American Honda Motor Co., Inc., et al.*, Civil Action No. 87-3525.

2. Lawn Darts Final Rule

The Commission will consider a draft Federal Register notice banning lawn darts capable of causing skull puncture injury. The rule was proposed in the Federal Register on July 29, 1988 (53 FR 28657).

3. Tremolite in Limestone Products, HP 87-1

The staff will brief the Commission on Petition HP 87-1 from Dr. Mark Germine concerning tremolite in limestone products. In addition the Commission voted to permit presentations by Dr. Mark Germine, Dr. Jerrold Abraham, Dr. Lynn Silver, and Mr. William Kitchen.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda. Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
October 26, 1988.

[FR Doc. 88-25077 Filed 10-26-88; 2:30 pm]
BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT. 53 FR 41645, Monday, October 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, October 31, 1988.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 6748.

Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 88-25051 Filed 10-26-88; 1:43 pm]
BILLING CODE 6750-06-M

INTER-AMERICAN FOUNDATION BOARD

Inter-American Foundation Board Meeting—Cancellation

TIME AND DATE: October 31, 1988, 6:00-9:30 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia, 22209.

The Inter-American Foundation's Board meeting scheduled for October 31, 1988 has been cancelled. No new date has been set.

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Date: October 25, 1988.

Charles M. Berk,
Sunshine Act Officer.
[FR Doc. 88-25013 Filed 10-25-88; 4:28 pm]
BILLING CODE 7025-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 203/Thursday, October 20, 1988/41277.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, October 25, 1988.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item two (recommendation to FAA re Review of Airline Sick Leave Policies) has been added. This item is to be discussed in the open part of the meeting.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
October 25, 1988.

[FR Doc. 88-25061 Filed 10-26-88; 1:44 pm]
BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-4-000]

Tennessee Gas Pipeline Co.; Filing

Correction

In notice document 88-24635 appearing on page 43012 in the issue of Tuesday, October 25, 1988, in the third column, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3332-4]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

Correction

In rule document 88-22483 beginning on page 38892 in the issue of Monday, October 3, 1988, make the following corrections:

§ 60.711 [Corrected]

1. On page 38916, in § 60.711(c), in table 1B, in the first column, under "Compliance provisions" in the fifth line, "(c)(2)" should read "(b)(2)".

2. On page 38917, in § 60.711(c), in table 1B, in the fourth column, in the first entry, "(1)" should read "(i)"; and in the fifth column, in the fifth entry, after "(h)," insert "(i)".

§ 60.713 [Corrected]

3. On page 38918, in the second column, in § 60.713(a)(2), in the seventh line, "ventilated" was misspelled.

4. On page 28919, in the first column, in § 60.713(b)(1)(iii)(C), the ninth line should read "within ±2.0 percent;".

5. On page 38921, in the first column, in § 60.713(b)(9)(ii), in the third line, "record" should read "records".

§ 60.715 [Corrected]

6. On page 38922, in the second column, in § 60.715(d), in the second line, "volumetric" was misspelled.

§ 60.717 [Corrected]

7. On page 38923, in the third column, in § 60.717(f), in the fourth line, after "operation" insert "is".

8. On the same page, in the same column, in § 60.717((f)(1), in the second line, "§ 670.7" should read "§ 60.7".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Finding on Foreign Social Insurance or Pension System; Zaire

Correction

In notice document 88-22292 appearing on page 38086 in the issue of Thursday, September 29, 1988, make the following correction:

In the second column, in the fifth line, after "are", insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers

Correction

In rule document 88-23734 beginning on page 40550 in the issue of Monday, October 17, 1988, make the following corrections:

1. On page 40551, in the third column, in the 17th and the 21st lines, "nonmonetary" was misspelled.

2. On page 40552, in the first column, in the 13th line, "used" should read "use".

§ 614.1 [Corrected]

3. On page 40553, in the third column, in § 614.1(d)(2)(ii), in the 12th line, "adhere" should read "adhered".

§ 614.2 [Corrected]

4. On page 40554, in the first column, in § 614.2(g)(1), in the second line, "included" should read "including"; and in the third line, "reserved" should read "reserve".

Appendix A—[Corrected]

5. On page 40556, in the third column, in the second complete paragraph, in the third line, "services" was misspelled.

Appendix B—[Corrected]

6. On page 40557, in the third column, in the first line, "completed" should read "complete".

7. On page 40558, in the third column, the last paragraph should be designated "h".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of Special Withdrawal Liability Rules; Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Pension Plan

Correction

In notice document 88-23986 beginning on page 40805 in the issue of Tuesday, October 18, 1988, make the following corrections:

On page 40807, in the table, in the first column, in the fifth line, after "1. Employer contributions", the footnote reference should be removed; and on the same line, in the second column, the third entry should read "13,815 [3]".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26180]

Rescission of Rules Under the Securities Exchange Act of 1934

Correction

FR Doc. 88-24230, beginning on page 41205 in the issue of Thursday, October 20, 1988, concerning the elimination of obsolete rules, was published in the "Proposed Rules" section of the issue. It should have appeared in the "Rules" section.

BILLING CODE 1505-01-D

federal register

Friday
October 28, 1988

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

National Marine Sanctuary Program Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 60469-7005]

National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Marine Sanctuaries Amendments of 1984, Title I of Pub. L. 98-498 (16 U.S.C. 1431 *et seq.*) (the Act or the Amendments). While the Amendments build upon the foundation established in the previous Marine Sanctuary Program regulations (48 FR 24296 (1983)), revisions are necessary to reflect procedural and some policy changes of the Amendments.

DATE: These regulations are effective November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 at 202/673-5122.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.*

II. General Background

On October 19, 1984, President Reagan approved Pub. L. No. 98-498; Title I of Pub. L. No. 98-498, referred to as the Marine Sanctuaries Amendments of 1984 (the Act or the Amendments), authorizes appropriations through FY 1988 for, and makes revisions to, Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.* The National Marine Sanctuary Program is administered by the Marine and Estuarine Management Division, National Oceanic and Atmospheric Administration, Department of Commerce. The Amendments set out the purposes and policies of the National Marine Sanctuary Program, establish specific criteria and procedures for designating and implementing National Marine Sanctuaries, and provide for greater participation by the Congress, the Regional Fishery Management Councils (established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*), and other affected agencies or persons. The designation standards set forth in the Amendments basically track the site identification and selection standards and active candidate criteria used to identify potential National Marine Sanctuaries, and evaluate sites for designation.

On June 12, 1986, NOAA published proposed regulations for continued implementation of the National Marine Sanctuary Program, pursuant to the Act (51 FR 21369). Written comments on the proposed regulations were accepted until August 11, 1986. These comments have been considered in preparing these final regulations.

The final regulations set forth the Program's mission and goals, amend procedures for revising the Site Evaluation List (SEL), set forth site identification and selection criteria for including areas of the marine environment possessing historical resources of special national significance on the SEL, revise the sanctuary designation standards and process, and initiate a consultation process with Congress and Regional Fishery Management Councils (when regulations on fisheries activities are affected) prior to commencing the environmental review process required pursuant to the National Environmental Policy Act. These regulations supersede the previous regulations for the program (48 FR 24296 (1983)).

III. Refinements to the Regulations for the National Marine Sanctuary Program

The proposed regulations solicited comments on procedural and policy revisions required to implement the Amendments. These modifications and how they are reflected in the final regulations are discussed below.

A. Findings, Purpose, and Policies

The Amendments add findings which recognize that certain areas of the marine environment possess "conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance" (Section 301(a)). This differs from the original Act, which provided, in section 302(a), that National Marine Sanctuaries should be designated only for their "conservation, recreational, ecological, or esthetic values" (Section 302, Pub. L. No. 92-532, codified at 16 U.S.C. 1432(a) (1983)). To reflect the addition of historical qualities, NOAA's working list of potential sites is being amended (See IV.A. of the Preamble and Subpart B of the regulations). Consistent with the Amendments purpose and policies, the National Marine Sanctuary Program provides for comprehensive management and conservation, including the support and coordination of scientific research involving the resources of marine sanctuaries, stresses efforts to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and encourages public and private uses of such resources consistent with the Program's primary objective to protect them (Section 301(b) (2)-(5)). These policies are reflected in the Program's mission and goals set forth at § 922.1.

B. Designation Standards

The Secretary of Commerce may designate a discrete area of the "marine environment" as a National Marine Sanctuary, if he finds that:

(a) the area is of special national significance due to its resource or human-use values;

(b) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive management of the area, including resource protection, scientific research and public education;

(c) Designation of the area as a National Marine Sanctuary will facilitate the objectives in subparagraph (b); and

(d) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(Section 303(a)).

These findings are reflected at § 922.33(a) of the final regulations.

C. Consultation

In making the above findings, the Secretary must consult with the House Committee on Merchant Marine and Fisheries; the Senate Committee on Commerce, Science, and Transportation; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including the coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by a proposed designation; and other interested persons. The consultation process for a potential designation is set forth in the final regulations at § 922.31.

Further, the Secretary of Commerce prepares, as part of an environmental impact statement, a resource assessment report regarding the commercial and recreational uses in the area proposed for designation. The Secretary must consult with the Secretary of the Interior with respect to any uses in the area subject to the primary jurisdiction of the Department of the Interior (See section 303(b) (2) and (3)). The requirement for preparation of the resource assessment report is set forth in the final regulations at § 922.31(h).

D. Fishery Regulations

Where fishery regulations are necessary, the Secretary shall provide the appropriate regional Fishery Management Council the opportunity to recommend to the Secretary draft sanctuary fishery regulations. This requirement is set forth in the final regulations at § 922.31(f).

E. Designation

A proposed designation of a National Marine Sanctuary becomes effective after the close of a review period of forty-five (45) days of continuous session of Congress, commencing with the publication of a notice of the designation and final implementing regulations in the **Federal Register**, unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval by Congress; or

(2) In the case of a proposed sanctuary located partially or entirely within state boundaries, the Governor of the affected state objects to the designation or any of its terms.

If the Secretary determines that disapproval of or objection to a proposed designation will affect the designation in a manner such that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the designation. Section 922.34 governs designation.

F. Access and Valid Rights

Section 304(c) of the Act provides that the Secretary may not terminate leases, permits, and rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98–498) for then existing National Marine Sanctuaries, or in existence on the date new national marine sanctuaries are designated pursuant to the Amendments. However, section 304(c) also provides that the exercise of such leases, permits or rights is "subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated." The provisions of section 304(c) are set forth at § 922.11 of the final regulations.

G. Research and Education

The Amendments, at section 306, specify that the Secretary may conduct research and education programs to carry out the purposes of the Act. Research and education are specifically discussed at § 992.40(a) of the final regulations.

IV. Sanctuary Designation Process

The revisions contained in the Amendments, discussed above, make several modifications to the sanctuary designation process. This section describes the revised designation process, which is depicted in summary form in Figure 1.

A. Site Evaluation List

To identify sites for future consideration as national marine sanctuaries, NOAA instituted a site evaluation process in 1982; this process culminated in a list of sites, the SEL, which was published in 1983 (48 FR 35568). As initially established, the SEL consisted of twenty-nine (29) natural resource sites. The SEL serves as NOAA's working list for possible national marine sanctuary designation and is discussed in subpart B of the regulations. The qualities expressed in the original Act were used in establishing the SEL; thus, the SEL was focused on sites with conservation, recreational, ecological, or esthetic qualities.

While the Amendments add historical, research, and educational qualities, sites possessing research and educational qualities were solicited and considered in the original SEL process. Research and educational qualities are inherent in sites possessing significant conservation, recreational, ecological, and esthetic values; consequently, sites possessing research and educational qualities of special national significance are included on the current SEL. Sites of nationally significant historical quality were not, however, considered in the SEL process; the evaluation teams did not include maritime archeologists or historians or any person schooled in submerged cultural resources. There are no historical sites on the SEL. Thus, the SEL list now requires revision to include discrete marine areas possessing nationally significant historical qualities for possible conservation and management as provided by the Act. Provisions for the revision of the SEL are set forth at § 922.22. In these regulations, NOAA's use of the term "historical" comports with the Act in encompassing cultural, archeological, and paleontological elements.

B. Designation of National Marine Sanctuaries

Selection of a site from the SEL as an active candidate represents the second phase in evaluating a site for potential designation; it begins the environmental impact statement process. Notice of selection as an active candidate and intent to prepare a draft environmental impact statement (DEIS) is placed in the **Federal Register**. At any time a site can be dropped from consideration if it is determined that a site does not meet the standard and criteria set forth in the Act.

After selection as an active candidate, a draft management plan (including necessary regulations) is prepared along with a draft environmental impact statement (DEIS). The DEIS evaluates the impacts of sanctuary designation and management plan implementation. During the preparation of the DEIS, a resource assessment report is prepared documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, a resource assessment section is prepared regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior (Section 303(b)(3)). After the DEIS and draft plan are prepared, a notice of proposed designation is published in the **Federal Register** and media serving communities which may be affected by the designation. On the same day that the **Federal Register** notice is issued, a detailed prospectus on the designation proposal (which includes the DEIS and draft plan), as discussed in § 922.32(a), is sent to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee for review for a forty-five (45) day period of continuous session.

After preparation of a final EIS and final management plan, including proposed final regulations, the Secretary of Commerce must determine whether to designate the area as a National Marine Sanctuary. Section 922.33(a) of the regulations sets forth the factors considered by the Secretary in making this determination. Designated sanctuaries should be illustrative of the nation's marine areas and allow for coordinated and comprehensive management. Generally, decisions to

designate areas as National Marine Sanctuaries are based on an evaluation of the area's natural and historical resource and human-use values; the effects of present and future uses on these values and the effects of designation on these uses; the adequacy of existing state and Federal management of the area; whether designation will ensure comprehensive management; the area's size and manageability, (*e.g.*, it is anticipated that the maximum size will not exceed that of the largest existing national marine sanctuary, the Channel Islands National Marine Sanctuary (1252 square nautical miles)); the fiscal capability to designate and operate any given area; and the public benefits to be derived from designation.

Notice of designation is published in the **Federal Register**. The designation becomes effective after the close of a second Congressional review period (and Governor's review for sites including state waters) of forty-five (45) days of continuous session of Congress, dating from the **Federal Register** notice of designation (See § 922.34).

If the terms of the designation are found acceptable by Congress, and the Governor(s), for sites including any state waters, the Secretary will implement the management plan, including surveillance and enforcement activities, and such research and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

FIGURE 1.—SANCTUARY DESIGNATION PROCESS (SUMMARY)

Process stage	Action	Notice
Site Evaluation List (SEL) Established.	Final SEL	FR Notice.
Selection as Active Candidate.	Site selected from SEL as "Active Candidate"	FR Notice; Public Notice of Selection.
Proposed Designation (STARTS NEPA PROCESS).	Development of Designation Materials	Notice of Intent to Prepare DEIS.
	Regional Scoping Meeting	FR Notice; Public Notice.
	Consultations with Congress, affected Regional Fishery Management Councils, states, Federal agencies, and other interested persons; preparation of DEIS, Draft Management Plan, Proposed Regulations, and Resource Assessment Report.	
	Prospectus to Congress (including Draft EIS and Draft Management Plan, proposed regulations for review under Section 304 of the Act).	FR Notice (including proposed regulations and summary of Draft Management Plan published concurrently with Draft EIS availability of Prospectus to Congress); Public Notice.
	Public Hearing	FR Notice; Public Notice.
	Prepare Final EIS/Management Plan and Designation Determination and Findings.	Occurs within three years of selection as Active Candidate.
Designation	If site meets criteria, Secreatary then designates the national marine sanctuary.	FR Notice (Designation, final regulations; availability of Final EIS/Final Management Plan Notice to Congress (304(b)).
	Designation effective after 45-day period for Congressional and Gubernatorial Review under Section 304(b) of the Act.	

V. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from five sources. Commenters included Federal and state agencies and representatives of the oil and gas industry. All comments received are on file at the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management and are available at that office for review upon request. Each of the major issues raised by commenters has been summarized and NOAA's responses are provided under the relevant subheading in this section.

Section-by-Section Analysis

Subpart B—Site Evaluation List

Proposed § 922.20(c)—One reviewer suggested that the additional criteria—historical, research, and education—to be considered when selecting sites did not sufficiently address the unique attributes of urban estuarine areas. The reviewer also noted that the research and educational values of urban estuarine systems may not necessarily be recognized within the context of conservation, recreational, ecological or esthetic values.

Response: NOAA recognizes the importance of urban estuarine areas and their research and educational values and believes that these values are sufficiently represented by the designation standards set out in section 303(a) of the Act. However, as stated in § 922.1(c)(i), priority consideration will be given to offshore areas where there are no other existing special area protection mechanisms. The commenter should also consider State, local and city governments as well as the National Coastal Zone Management Program for protection of urban estuarine areas.

Proposed § 922.21(a)—One reviewer suggested that the proposed regulations were not consistent with established cultural resource procedures in that sites do not attain national significance until they have been designated National Historic Landmarks (NHL) and that under the proposed rules a site could be designated as a national marine sanctuary without being nationally significant, *i.e.*, designated as an NHL.

Response: In accordance with the Act, a site does not have to be designated an NHL or listed on the National Register to be considered nationally significant. In a cultural resource management context, SEL selection based on the criteria used for evaluating NHL eligibility conforms with existing cultural resource procedures in that established uniform standards are used to identify important historical properties worthy of protection, preservation, research and interpretation. Designation as an NHL is not a prerequisite to SEL selection, nor does SEL selection necessarily imply nomination as an NHL. The SEL serves as the preliminary process for the identification and evaluation of sites having special national significance for possible designation as National Marine Sanctuaries. After placement on the SEL, sites are further evaluated when selected as Active Candidates for sanctuary designation. Nomination as

an NHL may result from the documentation compiled during the SEL process and Active Candidate evaluation; however, such designation is distinct from the purposes of designation as a National Marine Sanctuary under the Act.

Another reviewer suggested that if all sites on the SEL are nationally significant, that they would also be NHLs and, therefore, subject to the provisions of the regulations published by the Advisory Council on Historic Preservation for protecting cultural resources (36 CFR Part 800).

Response: Sites selected for placement on the SEL do not have to be NHLs and, therefore, do not necessarily fall under the Advisory Council's regulations. If, however, any site selected for placement on the SEL is already an NHL, it remains subject to those regulations.

Proposed § 922.21(b)—One reviewer suggested that the public comment period be lengthened to 90 days for review of proposed historical sites prior to their being added to the SEL.

Response: NOAA agrees with this comment and the regulations have been modified accordingly.

Proposed § 922.22—One reviewer suggested that the phrase "or state" be added after "Federal" in the first sentence since the statement does not preclude states from restricting activities on areas prior to formal site designation.

Response: The listing of a site on the SEL does not subject the site to Federal regulation under the Act. The status quo for the site is, therefore, unchanged. Accordingly, an area listed on the SEL is still subject to both Federal and state regulation under other authorities. The effect of inclusion of a site on the SEL is set forth at § 922.20(c).

Subpart C—Designation of National Marine Sanctuaries

Proposed § 922.33(a)(2)(B)—One reviewer suggested that management plans for sanctuaries designated at historically significant sites do not need additional measures to protect the site from disturbances related to outer continental shelf (OCS) mineral development activities because adequate protections are already in place.

Response: We acknowledge that the Department of the Interior (DOI) has responsibility for mitigating any adverse impact on historically significant sites from disturbances related to OCS mineral development activities. However, mitigation of adverse impact from OCS mineral development activities does not provide for coordinated and comprehensive management including scientific research, public education, and interpretation. A major goal of the National Marine Sanctuary Program is to enhance resource protection through comprehensive and coordinated conservation and management that complements existing regulatory authorities. The provisions of the Act enhance and complement the existing DOI historical resource protection program. The National Marine Sanctuary Program is the only mechanism to date for the protection, conservation, research, and interpretation of nationally significant historical resources beyond the territorial sea (see § 922.2(d) for the definition of marine environment). To ensure that all existing authorities are properly coordinated, it is essential that the management plan for any sanctuary designated at any nationally significant historical site address comprehensive protection, including, but not limited to, potential threats from OCS mineral development activities.

Proposed Appendix I—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites With Historical Qualities of Special National Significance

One reviewer suggested that the word "special" be deleted from the "special national significance" criterion for identification and selection because a site on the NHL may not meet the criteria for placement on the SEL.

Response: By specifying that only areas of "special" national significance may be designated a National Marine Sanctuary under the Act, some NHL sites may not qualify for consideration as a National Marine Sanctuary. The cultural resource component of the National Marine Sanctuary Program is intended to be very selective, illustrative of the Nation's maritime heritage and representative of the Nation's most significant historical marine resources. Thus, it is possible that some NHLs will not be considered for sanctuary designation. All historical National Marine Sanctuaries designated in the future will be eligible to be designated as NHLs, but all marine-situated NHLs may not necessarily be considered for designation as National Marine Sanctuaries.

A reviewer commented that references to the World Heritage List (WHL) are not relevant in making SEL decisions. *Response:* Since all future historical National Marine Sanctuaries will be eligible to be nominated as NHLs and because many of these National Marine Sanctuaries may also be internationally significant, it is appropriate to specify that some may be listed on the WHL. The use of the evaluation criteria for the WHL as the established uniform standard to evaluate international significance is consistent with cultural resources procedures and policies. Additionally, it recognizes the international nature of maritime cultural resources and emphasizes that consistent with the overall mission, the National Marine Sanctuary Program will coordinate its efforts to manage marine areas of special national significance with other countries managing marine protected areas.

VI. Other Actions Associated with the Notice of Final Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major "rules" within section 1(b) of Executive Order 12291 because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These final rules amend existing procedures by providing greater selectivity and specifity in initially identifying and designating potential National Marine Sanctuaries in accordance with the Marine Sanctuaries Amendments of 1984, Pub. L. 98-498. These rules establish a revised process for identifying, designating and managing National Marine Sanctuaries. They will not result in any direct economic or environmental effects, nor will they lead to any major indirect economic or environment impacts. They are intended to reduce delay and uncertainty in the site selection and approval process. All subsequent marine sanctuary designations and implementing regulations including any regulations recommended by the Fishery Management Councils will be reviewed for compliance with Executive Order 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated.

managing National Marine Sanctuaries. Because the notice and comment requirements of section 553 of Title 5 of the U.S. Code are not applicable to this proposed procedural rule (5 U.S.C. 553(b)(3)(A)), the Regulatory Flexibility Act also does not apply (5 U.S.C. 603(a)). All subsequent marine sanctuary designations and implementing regulations will be reviewed for compliance with the Regulatory Flexibility Act.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

These regulations do not contain a collection of information for purposes of the Paperwork Reduction Act.

(D) National Environmental Policy Act

NOAA has concluded that publication of these final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

Date: October 21, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Accordingly, 15 CFR Part 922 is revised as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Sec.

Subpart B—Site Evaluation List (SEL)

Subpart C—Designation of National Marine Sanctuaries

Subpart D—Implementation After Designation

Sec.

Authority: Pub. L. 98-498 (16 U.S.C. 1431-1439)

Subpart A—General

§ 922.1 Mission, goals, and special policies.

(a) In accordance with the standards set forth in Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (Act), the mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or esthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Provide enhanced resource protection through comprehensive and coordinated conservation and management of National Marine Sanctuaries that complements existing regulatory authorities;

(2) Support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources of the National Marine Sanctuaries;

(3) Enhance public awareness, understanding, appreciation and wise use of the marine environment; and

(4) Facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the National Marine Sanctuaries;

(c) To the extent consistent with the policies set forth in Title III of the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of National Marine Sanctuaries, while highly dependent on the nature of the sites' resources, will be no longer than necessary to ensure effective management;

(3) Management efforts will be coordinated to the extent practicable with other countries managing protected marine areas;

(4) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR Part 7), the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, Sept. 29, 1983) and other relevant Federal regulations.

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Active Candidate" means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

(c) "Historical" means possessing historical, cultural, archeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(d) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law.

(e) "National historic landmark" means a district, site, building, structure or object designated by the Secretary of the Interior under the National Historic Landmarks (NHL) Program (36 CFR Part 65).

(f) "National Marine Sanctuary" means an area of the marine environment, as defined above in subsection (d), of special national significance due to its resource or human-use values, which is designated to ensure its conservation and management.

(g) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department, or instrumentality of the Federal government, of any state or local unit of government, or of any foreign government.

(h) "Regional Fishery Management Council" means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(i) "Secretary" means the Secretary of the United States Department of Commerce or his or her designee.

(j) "Site Evaluation List" (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

(k) "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

(l) "Subsistence use" means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonedible items other than money, if the exchange is of a limited and noncommercial nature.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crewmember of the vessel.

§ 922.11 Access and valid rights.

Leases, permits, licenses, or rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of the Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98–498)), with respect to any National Marine Sanctuary designated before that date, or in existence on the date of designation of any National Marine Sanctuary designated after October 19, 1984, shall not be terminated by the Secretary. The Secretary, may, however, regulate such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

Subpart B—Site Evaluation List

§ 922.20 General.

(a) The Site Evaluation List (SEL) was established in 1983 as a comprehensive list of marine sites with high natural resource values that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries. Appendix 1 describes that list, how it was established and its purposes. In addition, Subpart F of Appendix 1 has been revised to establish identification and selection criteria for revising the list to include marine sites with historical qualities of special national significance.

(b) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(c) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.30, shall not subject the site to any regulatory control under the Marine Protection, Research and Sanctuaries Act. Such controls may only be imposed after designation, as provided for in § 922.34.

§ 922.21 Periodic reevaluation, deletions, and additions.

(a) The Secretary shall reevaluate any site remaining on the SEL for five years (December 31, 1988, for the original sites on the SEL and a separate five-year review period, beginning with the date of their addition, for any sites added to the SEL).

(b) If, after a five-year reevaluation, the Secretary determines that a marine site on the SEL is no longer highly qualified in accordance with the Program's mission and goals and the site identification and selection criteria, the Secretary shall publish a notice in the **Federal Register** of an intent to delete the site from the SEL and provide a 45-day period for public comment.

(c) As sites are designated as National Marine Sanctuaries, or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL.

(d) If, after a five-year reevaluation, the Secretary determines that the new sites should be considered for addition to the SEL, the Secretary shall publish a notice in the **Federal Register** at least 12 months prior to initiating a new site identification process. After a 90-day period is provided for public comment on the Secretary's determination, the Secretary shall reevaluate the prior SEL development process and publish a notice in the **Federal Register** requesting public comment on that process and any proposed modifications, if necessary.

(e) Except as provided in § 922.21(d) and § 922.22, the Secretary will consider recommendations of potential additional sites to the SEL only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. The Secretary may determine, after an opportunity for public review and comment, whether such sites meet the selection criteria and are highly qualified in accordance with the Program's mission and goals. Qualified sites will be added to the SEL for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations.

§ 922.22 Addition of sites with historical qualities of special national significance.

(a) The identification and selection criteria set forth in Appendix 1 shall be used to identify areas of the marine environment possessing historical qualities of special national significance. The Secretary shall establish a group of experts to be called the Marine Historical Resource Evaluation Team to recommend a list of marine sites with historical values of special national significance for inclusion in the SEL. The Marine and Estuarine Management Division of the National Oceanic and Atmospheric Administration shall direct and coordinate the activities of the Team.

(b) After analysis of the historical sites recommended by the Marine

Historical Resource Evaluation Team, the Secretary shall publich a notice in the Federal Register of the historical sites proposed for placement on the SEL and shall afford the public at least 90 days in which to comment. On the basis of the identification and selection criteria in Appendix 1, and after full consideration of public comment, the Secretary shall select those sites which are qualified for placement on the SEL because of their historical qualities of special national significance, and shall publish a notice in the Federal Register of the selected sites. Written documentation shall be prepared describing the values qualifying each site for placement on the SEL.

Subpart C—Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in § 922.33.

(b) Selection of a site as an Active Candidate shall begin the formal sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designated standards and criteria set forth in the Act.

§ 922.31 Development of designation materials.

(a) After selecting a site as an Active Candidate, the Secretary shall prepare a draft designation document, including terms of the proposed designation, a draft management plan to implement the proposed designation and any proposed regulations needed to implement the terms of the proposed designation. The draft designation document shall be prepared in consultation with the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act which may be affected by the proposed designation; and other interested persons.

(b) The terms of the proposed designation shall include the geographic area to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic values; and the types of activities that would be subject to regulation in order to protect those characteristics. Following designation, the terms of designation may be modified only by the same procedures through which the original designation was made. If proposed regulations are needed to implement the terms of the proposed designation, they shall be consistent with the terms of designation. Following designation, all amendments to these regulations shall be consistent with the terms of designation.

(c) The draft management plan generally shall include sections on: goals and objectives; management responsibilities; resource studies and research; enforcement, including surveillance activities; interpretive and educational programs; and proposed regulations (where applicable). Proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies shall be developed in consultation with those agencies.

(d) A draft environmental impact statement (DEIS) shall be prepared on the designation document/management plan, including any proposed regulations. The DEIS shall also include the resource assessment report, discussed in paragraph (h) of this section; maps depicting the boundaries of the proposed area, and the existing and potential uses and resources of the area.

(e) The draft management plan and the DEIS shall be prepared as quickly as possible to allow for maximum public input. The time period between Active Candidate selection and proposing to designate the area as a National Marine Sanctuary normally will not exceed three (3) years unless the Secretary determines that additional time is needed for public input.

(f) The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare and recommend for consideration by the Secretary draft regulations for fishing within the proposed sanctuary if the proposed sanctuary includes waters within the U.S. Exclusive Economic Zone.

(1) The Council shall have one hundred and twenty (120) days from the date of the Secretary's request to prepare draft fishery regulations and submit them to the Secretary. In preparing these recommendations, the Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed sanctuary designation.

(2) Draft regulations recommended by the Council, or its determination that regulations are not necessary, may be accepted by the Secretary. When making a determination whether to accept the Council's recommendation, the Secretary shall consider whether the Council's action fulfills the purposes and policies of the Marine Protection, Research, and Sanctuaries Act and the goals and objectives of the proposed designation;

(3) The Secretary shall prepare proposed fishery regulations necessary to implement the proposed sanctuary designation if the Council:

(i) Declines to make a determination with respect to the need for regulations,

(ii) Makes a determination which is rejected by the Secretary, or

(iii) Fails to recommend draft proposed regulations within the period specified in paragraph (f)(1) of the section.

(4) All amendments to fishery regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(g) Fishery activities not proposed for regulation under paragraph (f) of this section may be listed in the draft sanctuary designation document as potentially subject to regulation, without following the procedures specified in paragraph (f) of this section. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in paragraph (f) shall be followed.

(h) As part of the DEIS, the Secretary shall develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial or recreational resource uses in the area

that are subject to the primary jurisdiction of the Department of the Interior.

(i) After the DEIS is prepared, the Secretary shall publish a notice of proposed designation in the **Federal Register**. That notice shall include the text of the draft designation document, any proposed regulations determined necessary to implement the proposed designation, and a summary of the management plan. The **Federal Register** notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS.

(1) Notice of the proposed designation shall be published in newspapers of general circulation or communicated to electronic media in the communities that may be affected by the proposal.

(2) No sooner than thirty (30) days after publication of the notice of proposed designation in the **Federal Register**, the Secretary shall hold at least one public hearing in the coastal area or areas most affected by the proposed designation for the purpose of receiving the views of any interested parties.

§ 922.32 Congressional prospectus.

(a) As required by section 304(a)(1)(C) of the Act, on the same day that the **Federal Register** notice in § 922.31(i) is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee a prospectus containing:

(1) The terms of the proposed designation;

(2) The basis of the designation findings made under section 303(a) of the Act with respect to the area;

(3) An assessment of the factors required to be considered by section 303(b)(1) of the Act;

(4) Proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(5) The DEIS and the draft management plan, including the proposed regulations, detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(6) An estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

(7) An evaluation of the advantages of cooperative state and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any state or is superjacent to the subsoil and seabed within the seaward boundary of a state, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*); and

(8) Any proposed regulations that may be necessary and reasonable to implement the proposed designation.

(b) In accordance with the provisions of section 304 of the Act, the Secretary shall not publish a notice to designate an area proposed as a National Marine Sanctuary until after forty-five (45) days of a continuous session of Congress starting with the day the prospectus required by paragraph (a) of this section is submitted to Congress. If either the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science and Transportation of the Senate, within the forty-five day period, issue a report concerning the prospectus, this report shall be considered by the Secretary before publishing a notice to designate a national marine sanctuary.

§ 922.33 Designation determination and findings.

(a) In addition to preparation of the final environmental impact statement (FEIS), final regulations, and final management plan, the Secretary shall prepare a written Designation Determination and Findings to include:

(1) A determination that the designation will fulfill the purposes and policies of the Act; and

(2) Finding that:

(i) The area is of special national significance due to its resource or human-use values;

(ii) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(iii) Designation of the area as a national marine sanctuary will ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

(iv) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) In preparing the Designation Determination and Findings the Secretary must consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivitiy, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in paragraph (b) considerations (1), (2) and (3) of this section;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(9) The socioeconomic effects of sanctuary designation; and

(10) The fiscal capability to manage the area as a National Marine Sanctuary.

(c) In preparing the Designation Determination and Findings, the Secretary shall consider the views of interested persons, heads of interested Federal agencies, responsible officials of appropriate state and local government entities, and appropriate officials of any Regional Fishery Management Council(s) that may be affected by the designation submitted in response to the notice proposing the designation or submitted as part of a public hearing on the proposal; and any reports submitted by the House Committee on Merchant Marine and Fisheries or the Senate Committee on Commerce, Science, and Transportation in response to the sanctuary proposal prospectus.

§ 922.34 Designation.

(a) In designating an area as a National Marine Sanctuary, the Secretary shall publish a notice of the

designation in the **Federal Register**; this notice shall include the text of the final implementing regulations and shall also advise the public of the availability of the final management plan and the final EIS.

(b) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with section 304(b)(4) of the Act, beginning on the date of publication of the Federal Register notice in paragraph (a) of this section unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval consistent with section 304(b)(3) of the Act; or

(2) In the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor(s) of the affected state(s) certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state(s).

(c) If the Secretary determines that the actions in paragraph (b) of this section affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (b)(1) of this section or not certified under paragraph (b)(2) of this section shall take effect.

§ 922.35 Coordination with States.

(a) The Secretary shall consult and cooperate with affected states throughout the national marine sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with a federally approved state coastal zone management program. For the purposes of a consistency review by states with a federally approved coastal zone management programs, designation of a national marine sanctuary is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR Part 930, Subpart C.

(2) Ensure that relevant state agencies are consulted prior to holding any public hearings pursuant to § 922.31(i)(2).

(3) Provide the Governor an opportunity to certify the designation or any of its terms as unacceptable as specified in § 922.34(b)(2).

Subpart D—Implementation After Designation

§ 922.40 General.

(a) The Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities, and conducting such research and education as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with the sanctuary management plan, the Secretary shall develop and implement a site-specific contingency and emergency-response plan designed to protect the sanctuary resources. The plan shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

(c) Where essential to prevent immediate, serious and irreversible damage to sanctuary resources, activities including those not listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed one hundred and twenty (120) days, during which time an appropriate amendment of the terms of the designation shall be sought by the Secretary.

(d) Every five years, or sooner, the Secretary shall evaluate the substantive progress toward implementing the management plan and the goals of a designated sanctuary, especially the effectiveness of site-specific management techniques.

§ 922.41 Enforcement procedures.

The consolidated civil procedure regulations, set forth at 15 CFR Part 904, shall apply to all enforcement matters under the Act.

Appendix 1 to Part 922—National Marine Sanctuary Program Site Identification and Selection Criteria for Marine Areas with Qualities of Special National Significance

Background

The Site Evaluation List (SEL) was established in 1983 (48 FR 35568, August 4, 1983). Only sites on the SEL may be considered by the Secretary for subsequent review as "Active Candidates" for designation.

The original SEL was based on the then existing Marine Research, Protection, and Sanctuaries Act, which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. It consisted of twenty-nine (29) marine sites with high natural resource values, identified and recommended for inclusion on the SEL by regional resource evaluation teams in accordance with the National Marine Sanctuary Program's mission and goals and then existent site identification and selection criteria (48 FR 24296, May 31, 1983). The Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498) amended the Act to add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites.

Areas of nationally significant research and educational qualities were considered in establishing the original SEL. These qualities are inherent in sites possessing significant conservation, recreational, ecological, or esthetic value. Therefore, additional areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.21 of the regulations.

Sites possessing nationally significant historical resources were not specifically considered when establishing the original SEL. There are no historical sites on the SEL. The existing SEL now needs to be amended to add areas of the marine environment possessing historical qualities of special national significance. Thus, the existing site identification and selection criteria have been amended to incorporate more specific criteria to identify and select areas of the marine environment possessing historical qualities of special national significance.

Site Identification and Selection Criteria

The following criteria are grouped into four categories: (1) Natural resource values; (2) human use/historical resource values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the National Marine Sanctuary Program and are designed to ensure that sites recommended to NOAA for SEL consideration have high natural resource and human resource values.

In selecting sites for the SEL, NOAA also considers the extent information on the site is available, existing and potential activity impacts and management concerns (as presented in sections III and IV, below). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of the site as not qualified for sanctuary status.

At the SEL stage, NOAA's prime focus is on the site's natural resource and human use/historical resource values. The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Marine Protection, Research, and Sanctuaries Act emphasizes the protection and management of marine areas which are of special national significance based on the site's conservation, recreational, ecological, historical, research,

educational or esthetic qualities. Other, more specific issues are factored into NOAA's decision whether to select a site as an Active Candidate (see Subpart C of the regulations).

To determine if an area possesses historical values of special national significance and otherwise meets the Sanctuary designation standards specified in Section 303 of the Act, certain definitions and criteria are included in this appendix (see II.F) for use in evaluating these potential sites for listing on the SEL in accordance with § 922.22 of the regulations.

I. Natural Resource Values

A. Subregional Representation

The area under consideration is representative of the biogeographic subregion in which it is located.

Examples: This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

B. Community Representation

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (*i.e.*, on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

Examples: (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and graduation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a variety of ecological communities associated with the east Florida reef tract.

C. Biological Productivity

The area under consideration is significant in relation to its level of primary and/or secondary production.

Examples: (1) East Breaks at the edge of the continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provides energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

Note: This example also meets Criterion I.F.

(4) In many cases, coral reefs are not only energetically self-sustaining (*i.e.*, they produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (*i.e.*, products that are imported and conserved).

D. Biotic Character/Species Representation

The area under consideration is of special interest because it supports:

(1) Ecologically limited species;

(2) Ecologically important species; or

(3) Unique species associations or biological assemblages.

Examples: (1) This criterion would apply to marine habitat areas upon which ecologically limited species (*e.g.*, threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands Marine Sanctuary, which supports one of the most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin abalone, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central Texas.

E. Species Maintenance

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migration areas.

Examples: (1) The waters off Point Reyes and the Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California sea lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

F. Ecosystem Structure/Habitat Features

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

Examples: (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing often have unique physical and ecological characteristics, high production, and species diversity/population densities which are often greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of the Gulf Stream/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

Note.—This example also meets Criterion I.C.

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts, varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

II. Human Use/Historical Resource Values

A. Fishery Resources of Recreational Importance

The area under consideration contains fish and shellfish species, species groups (*e.g.*, snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

B. Fishery Resources of Commercial Importance

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

C. Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

Examples: (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Gulf of the Farallones National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Gulf of the Farallones National Marine Sanctuaries provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and snorkeling enthusiasts from all over the world.

(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

D. Research Opportunity

The area under consideration provides exceptional opportunities for research in marine science and resource management.

Examples: (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to development and use of marine resources.

E. Interpretive Opportunity

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

Examples: (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems, including open ocean, fringing coral reefs, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond traditional educational tools such as brochures and pamphlets.

F. Historical, Cultural, Archeological or Paleontological Significance

The area under consideration contains (or is likely to contain) historical resources of special national significance.

Definitions

The term "historical" as defined in § 922.2(c) means possessing historical, cultural, archeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures, and human activities and events. The term is used in the broad sense to refer to both pre-historic and historic periods, to the anthropological concept of culture, and to the processes, events, places, and objects related to the human past. The phrase "special national significance" in the context of historical areas denotes those areas with historical values of unique national significance and which are illustrative of the nation's maritime heritage.

Criteria for Identification and Selection

The site identification criteria to be used by the Marine Historical Resource Evaluation Team to make its recommendation to the Secretary and the criteria to be used by the Secretary for selection of recommended sites for inclusion on the SEL are the same.

To qualify for recommendation to the Secretary and for selection for listing on the SEL because of a site's historical values, a site must have special national significance within the meaning set forth below in paragraphs (1) and (2) and meet the programmatic requirements set forth in paragraph (3). In determining whether a site has special national significance, the site's contribution to the historical resources already represented in the National Marine Sanctuary Program, if any, shall also be considered.

(1) *Determination of Significance*—The National Historic Landmark (NHL) Program (36 CFR Part 65), administered by the Department of the Interior, focuses attention on properties of exceptional value to the nation as a whole. It is the Federal means of weighing the national significance of historical resources. Properties designated as NHLs that are not already listed on the National Register of Historic Places are automatically listed there. In addition to adding historical units to the National Park System, NHL designation is a prerequisite for determining the eligibility of historical resources for nomination to the World Heritage List.

Consistent with the Marine Research, Protection, and Sanctuaries Act directive that the management of special marine areas complement existing regulatory authorities to the extent practicable, the criteria for nomination as a NHL shall be used as the first step in evaluating the historical, cultural, archeological or paleontological significance of a marine resource (See Table 1). Sites of national significance demonstrated by their designation as NHLs, or considered in consultation with the Department of the Interior and other appropriate authorities as meeting the NHL criteria, shall be further evaluated for recommendation for selection and evaluation for addition on the SEL, in accordance with paragraphs (2) and (3), below. Sites within the jurisdiction of the United States which have international significance as determined by the criteria for nomination to the World Heritage List shall also be evaluated (See Table 2).

(2) *Determination of Representative Distribution*—In addition to having national significance, a site, in order to be recommended or selected, must complement or contribute to the desired range of historical resources of the National Marine Sanctuary Program. Consistent with the Program's mission and goals set forth in § 922.1 of the regulations, sites recommended or selected for historical qualities must be illustrative of the nation's maritime heritage and representative of the nation's most significant historical marine resources.

(3) *Additional Programmatic Requirements*—In addition to having special national significance to qualify for recommendation and selection for addition to the SEL, coordinated and comprehensive conservation and management of the site including: (a) resource protection; (b) scientific reseach and monitoring; and (c) public education must be necessary in order to derive maximum present and future public benefit from the site's resources. Designation of a site as a National Marine Sanctuary must also complement existing regulatory authorities and improve the protection and preservation of the site's resources.

Additional Factors in Site Identification and Selection

III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

IV. Management Concerns

A. Relationship to Other Programs

While some sanctuaries may be designed to protect resources not currently managed by other existing programs (*e.g.*, the *U.S.S. MONITOR* on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the National Marine Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, national marine sanctuary designation could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other programs' efforts such as national estuarine research reserves, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

B. Management of a Conservation Unit

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation

unit amenable to effective management given fiscal and staff constraints of the managing entities.

C. Accessibility

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to factors which limit or enhance public access to a particular site.

D. Surveillance and Enforcement

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surveillance and the capabilities of responsible agents (*e.g.*, U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types of resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, personnel, equipment, and budgetary requirements.

E. Economic Considerations

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by ensuring long-term protection for commercially significant resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent feasible, a decision to include a proposed site on the SEL will take into consideration the economic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic effects of sancturay designation.

Table 1.—National Historic Landmarks Program Selection Criteria (36 CFR 65.4)

Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or even associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves if persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

Table 2.—Criteria for Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which have been nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

[FR Doc. 88-24713 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-08-M

federal register

Friday
October 28, 1988

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921

National Estuarine Reserve Research System Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 70874-7174]

National Estuarine Reserve Research System Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The regulations revise existing rules for national estuarine sanctuaries in accordance with the Coastal Zone Management Reauthorization Act of 1985 (Pub. L. 99-272) and recommendations contained in the Office of Inspector General Report No. F-726-5-010, "Opportunities to Strengthen the Administration of the Estuarine Sanctuary Program." Effective with the signing of the Coastal Zone Management Act (CZMA) amendments on April 7, 1986, the name of the Estuarine Sanctuary Program changed to National Estuarine Reserve Research System; estuarine sanctuary sites are referred to as national estuarine research reserves. These regulations revise the process for designation of research reserves. Greater emphasis is placed on the use of reserves to address national estuarine research and management issues, and to make maximum use of the System for research purposes through coordination with other elements within NOAA and with other Federal and state agencies which are sponsoring estuarine research. Additional emphasis is also given to providing financial assistance to states to enhance public awareness and understanding of estuarine areas by provding opportunities for public education and interpretation. The regulations provide new guidance for delineating reserve boundaries and new procedures for arriving at the most effective and least costly approach to acquisition land. Clarifications in the total amount of financial assistance authorized for each national estuarine research reserve, and in criteria for withdrawing the designation of a reserve, have also been added.

DATE: Comments will be accepted until December 30, 1988. After the close of the comment period and review of the comments received, final regulations will be published in the **Federal Register.**

ADDRESS: Send comments to: Mr. Joseph Uravitch, Chief; Marine and Estuarine Management Division; Office of Ocean and Coastal Management, NOS/NOAA; 1825 Connecticut Avenue NW., Washington DC 20235, (202) 673-5122.

FOR FURTHER INFORMATION CONTACT: Mr. Art Jeffers, (202) 673-5126.

SUPPLEMENTARY INFORMATION: NOAA is proposing revised regulations for implementing the National Estuarine Reserve Research System, pursuant to section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1416). The System has been operating under National Estuarine Program regulations published June 27, 1984 (49 FR 26502). Based on experience in operating the System and on the Coastal Zone Management Act (CZMA) amendments effective in April 1986, a number of changes in operating procedures and policy are required The proposed regulations implement these changes, which include:

I. Changing the Name and Emphasis of the Program

The CZMA amendments established the National Estuarine Program System (System). The System consists of (1) Each estuarine sanctuary designated before enactment of the Coastal Zone Management Reauthorization Act of 1985, and (2) each estuarine area designated as a national estuarine research reserve under subsection 921.30 of these regulations. The term estuarine sanctuary no longer appears in regulations; the term research reserve or reserve appears in its place.

The Mission Statement for the System is much the same as for the National Estuarine Sanctuary Program. However, the goals for the National Estuarine Reserve Research System stress the use of reserve sites for promotion and coordination of estuarine research on a national level as the highest priority and reason for establishing the System. The protection and management of estuarine areas and resources are clearly intended to support the research mission, not as ends in themselves. Consultation with other Federal and state agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research is also a clearly defined goal of the System. The regulations also emphasize using a reserve's natural resources and ecology to enhance public awareness and understanding of estuarine areas, and providing suitable opportunities for public education and interpretation. This education goal has been elevated to become one of the essential criteria for designation of a reserve.

II. Revision of the Procedures for Selecting, Designating and Operating National Estuarine Research Reserves

(A) *Revision of designation criteria.* The Coastal Zone Management Reauthorization Act of 1985 established, for the first time, statutory criteria for designating an area as a national estuarine research reserve. An area may be designated by the Secretary of Commerce if:

"(1) The Governor of the coastal state in which the area is located nominates the area for that designation; and

(2) The Secretary of Commerce finds that:

(A) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(B) The law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research;

(C) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

(D) The coastal state in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section."

Some of these criteria for designation are either new or substantially more specific than those contained in the existing regulations. For example, the Governor in a coastal state must nominate an estuarine area for designation, and findings are required that the law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research and that designation of the area will serve to enhance public awareness and understanding of estuarine areas. The criteria in the existing regulations have been revised accordingly.

(B) *Revision of site selection criteria and procedures.* The criteria for selecting an estuarine area for designation as a national estuarine research reserve have been expanded to provide guidance for determining boundaries for the proposed site. The Office of Inspector General Report No. F-726-5-010 criticized the lack of specific guidelines for setting limits on boundaries around estuarine sanctuaries to ensure that only land essential to the mission of the program be included inside the sanctuary. References in the existing regulations to

ensure that the boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit are too vague, particularly since terms are not defined. The proposed regulations define key land and water areas as a "core area" within the reserve which is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural processes. The determination of key land and water areas must be based on scientific knowledge of the area. The concept of a "buffer" area to protect the core area and provide additional protection for estuarine-dependent species has also been defined in the regulations. The buffer zone may include an area necessary for facilities required for research and interpretation, and additionally, to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonable could be expected to occur. States will be required to use scientific criteria to justify the boundaries selected for a proposed site.

The information requirements for NOAA approval of a proposed site under existing regulations were confusing and now have been clarified.

NOAA has recognized the need to conduct studies to develop a basic description of the physical, chemical, and biological characteristics of the site. As a result, states may now be eligible for Federal funding of these studies after NOAA approval of a proposed site.

(C) *Management plan development.* Once NOAA approves the proposed site and decides to proceed with designation, the state must develop a draft management plan. The contents of the plan, including the memorandum of understanding (MOU) between NOAA and the state, are specified in the regulations. The acquisition portion of the plan has been greatly expanded to implement recommendations in the Office of Inspector General Report No. F–726–5–010. It is proposed that states be required to justify the use of fee simple acquisition methods and make greater use of non-fee simple methods to conserve expenditure of funds. For each parcel, both in the core area and the buffer zone, states must determine, with appropriate justification: (1) The minimum level of control(s) required, (2) the level of existing state control, and (3) the level of additional state control(s) required; states must also examine all reasonable alternatives for attaining the additional level of control required, perform a cost analysis of each, and rank, in order of cost, the alternative methods of acquisition which were considered. The cost-effectiveness assessment must also compare short-term and long-term costs. The state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required.

(D) *Financial assistance awards for site selection and post site selection.* The first five types of awards under the National Estuarine Reserve Research System is for site selection and post-site selection, which includes preparation of a draft management plan (including MOU) and the collection of information necessary for preparation of the environmental impact statement. The maximum total Federal share of these awards has been raised to $100,000. Of this amount, up to $25,000 may be used to conduct the site selection process as described in § 921.11. After NOAA's approval of a proposed site and decision to proceed with the designation process, the state may expend: (1) Up to $40,000 of this amount to develop the draft management plan and collect information for preparation of the environmental impact statement; and (2) up to the remainer of available funds to conduct studies to develop a basic description of the physical, chemical, and biological characteristics of the site.

(E) *Financial assistance awards for acquisition, development, and initial management.* The regulations divide eligibility for financial assistance awards for acquisition and development into two phases. In the initial phase, states are working to meet the criteria required for formal research reserve designation, i.e., establishing adequate state control over key land and water areas in accordance with the draft management plan and preparing a final management plan. In this pre-designation phase, funds are available for acquiring interest in land, which is the primary purpose of this award, and for minor construction (e.g., nature trails and boat ramps), preparation of architectual and engineering plans and specifications, development of the final management plan, and hiring a reserve manager and other staff as necessary to implement the NOAA approved draft management plan.

The length of time for this initial phase of acquisition and development may be up to three years. After the site receives Federal designation as a national estuarine research reserve, the state may request additional financial assistance to acquire additional property interests (e.g., for the buffer zone), for construction of research and interpretive facilities, and for restorative activities in accordance with the approved final management plan.

The Coastal Zone Management Reauthorization Act of 1985 specifies that the amount of financial assistance provided with respect to the acquisition of land and waters, or interests therein, for any one national estuarine research reserve may not exceed 50 per centum of the costs of the lands, waters, and interests therein or $4,000,000, whichever amount is less.

The amount of Federal financial assistance provided under the regulations for development costs directly associated with major facility construction (i.e., other than land acquisition) for any one national estuarine research reserve must not exceed 50 per centum of the costs of such construction or $1,000,000, whichever amount is less.

(F) *Financial assistance awards for operation and management.* The amount of Federal financial assistance available to a state to manage the reserve and operate programs consistent with the mission and goals of the National Estuarine Reserve Research System has been raised to $420,000. Of this amount, no more than $70,000 may be requested in a twelve month period, allowing for a period of Federal assistance for operation of management assistance of six years of more. Up to ten percent of the total award (Federal and state) each year may be used for construction-type activities.

A time limit has been imposed on the expenditure of operations and management awards for personnel positions. The Federal portion of operations and management awards may be used for the support of any single staff position (e.g., reserve manager, assistant manager, research coordinator, education/interpretive coordinator, secretary/administrative assistant, custodial support, or their equivalents) for a period not exceeding three years. The intent of this provision is to ensure that the state makes a longterm commitment of resources to staff the reserve adequately, well in advance of the period when Federal funding for operation and management is terminated.

(G) *Financial assistance for research.* The CZM Reauthorization Act of 1985 specifically affects the conduct of the System's research program by establishing the requirement for developing Estuarine Research Guidelines and specifying what these guidelines shall include. The legislation also requires the Secretary of Commerce to require that NOAA, in conducting or

supporting estuarine research, give priority consideration to research that uses reserves in the System, and that NOAA consult with other Federal and state agencies to promote use of one or more reserves by such agencies when conducting estuarine research.

The research guidelines, which are referred to in regulations, but are not part of them, state that NOAA will provide research grants only for proposals which address research questions and coastal management issues that have highest national priority as determined by NOAA, in consultation with prominent members of the estuarine research community.

One significant addition to the regulations is that research awards are available on a competitive basis to any coastal state or qualified public or private person, thus making it possible for the first time for public or private persons, organizations or institutions to compete with coastal states and coastal state universities for NOAA research funding to work in research reserves.

(H) *Financial assistance awards for interpretation and education.* The CZM Reauthorization Act of 1985 authorizes the award of grants for the purposes of conducting educational and interpretive activities. To stimulate the development of innovative or creative interpretive and educational projects and materials which will enhance public awareness and understanding of estuarine areas, the regulations provide for funds to be available on a competitive basis to any coastal state entity. These funds are provided in addition to any other funds available to a coastal state under these regulations.

Categories of potential educational and interpretive projects include:

(1) Design, development and distribution/placement of interpretive or educational media (i.e., the development of tangible items such as exhibits/displays, publications, posters, signs, audio-visuals, computer software, and maps, which have an educational or interpretive purpose, and techniques for making available or locating information concerning reserve resources, activities, or issues);

(2) Development and presentation of curricula, workshops, lectures, seminars, and other structured programs or presenatations for on-site facility or field use;

(3) Extension/outreach programs; or

(4) Creative and innovative methods and technologies for implementing interpretive or educational projects.

Interpretive and educational projects may be oriented to one or more research reserves or the entire System. Those projects which would benefit more than one research reserve, and, if practical, the entire National Estuarine Reserve Research System, shall receive priority consideration for funding.

III. Other actions associated with the proposed rulemaking

(A) *Classification under executive order 12291.* NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the CZM Reauthorization Act of 1985. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

(B) *Regulatory Flexibility Act analysis.* A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying and designating national estuarine research reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses.

(C) *Paperwork Reduction Act of 1980.* This rule contains collection of information requirements subject to Pub. L. 96-511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648-0121) for use through October 31, 1989. Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts; Room 1235; Department of Commerce; Washington, DC; 20230; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC; 20503.

(D) *Executive Order 12612.* This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

(E) *National Environmental Policy Act.* NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental protection, Natural resources, and Wetlands.

Dated: October 21, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance, Catalog Number 11.420, National Estuarine Reserve, Research System.

For the reasons set forth in the preamble, it is proposed that 15 CFR Part 921 be amended by revising Subparts A through F and by adding Subparts G and H to read as set forth below. No changes are proposed to Appendix 1—Biogeographic Classification Scheme or Appendix 2—Typology of National Estuarine Research Reserves.

PART 921—NATIONAL ESTUARINE RESERVE SYSTEM REGULATIONS

Subpart A—General

Sec.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

* * * * *

Authority: Section 315, Pub. L. 92–583, as amended; 86 Stat. 1280 (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Reserve Research System is the establishment and management, through Federal-state cooperation, of a national system of estuarine research reserves representative of the various regions and estuarine types in the United States. Estuarine research reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the System for carrying out this mission are to:

(1) Ensure a stable environment for research through long-term protection of estuarine reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of the estuarine environment and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas;

(c) National estuarine research reserves shall be open to the public. Multiple uses are allowed to the degree compatible with the research reserve's overall purpose as provided in the management plan (see § 921.12) and consistent with paragraphs (a) and (b), of this section. Use levels are set by the individual state and analyzed in the management plan. The research reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access may be restricted to certain areas within a research reserve.

(d) Certain manipulative research activities may be allowed on a limited basis, but only if specified in the management plan and only if the activity is consistent with overall reserve purposes and the reserve resources are protected. Manipulative research activities with a significant or long-term impact on reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Habitat manipulation for resource management purposes is not permitted within national estuarine research reserves.

(e) While the intent of establishing national estuarine research reserves is the protection of natural pristine estuarine sites for research, educational and interpretive purposes, NOAA recognizes that many estuarine areas have undergone ecological change as a result of human activities. Although restoration of degraded areas is not a primary purpose of the System, some restorative activities may be permitted in an estuarine research reserve as specified in the management plan.

(f) NOAA may provide financial assistance to coastal states, not to exceed 50 percent of all actual costs, to assist in the acquisition, development and operation of, and the conduct of educational or interpretive activities concerning, national estuarine research reserves (see Subpart H). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 50 percent of all actual costs, to support research and monitoring within a national estuarine research reserve. Five types of awards are available under the National Estuarine Reserve Research System. The predesignation awards are for site selection, draft management plan preparation and conduct of basic characterization studies. The acquisition and development award is intended primarily for acquisition of interests in land and construction. The operation and management award provides funds to assist in implementing the research, educational, and administrative programs detailed in the research reserve management plan. At the conclusion of Federal financial assistance for operation and management, funding for the long-term operation of the research reserve becomes the responsibility of the state. The research award provides funds to conduct estuarine research and monitoring within the System. The educational and interpretive award provides funds to conduct estuarine educational and interpretive activities within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations can be included within national estuarine research reserves only if the managing entity commits to long-term non-manipulative management. Federal lands already in protected status cannot comprise the key land and water areas of a research reserve (see § 921.11(c)(3)).

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315 of the Act, 16 U.S.C. 1461, establishes the National Estuarine Reserve Research System.

(b) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or designee.

(c) "Coastal state" means a state of the United States in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably

diluted with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes (see 16 U.S.C. 1453(7)).

(e) "National Estuarine Research Reserve" means an area that is a representative estuarine ecosystem suitable for long/term research, which may include all or the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)). This includes those areas designated as national estuarine sanctuaries under section 315 of the Act prior to the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 and each area designated as a national estuarine research reserve pursuant to the provisions of these regulations.

§ 921.3 National Estuarine Reserve Research System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National estuarine research reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the national Estuarine Reserve Research System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions. Figure 2 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act.

(a) The National Estuarine Reserve Research System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Reserve Research System (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal zone management program, the designation of a national estuarine research reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal zone program as provided by section 307(c)(1) of the Act, and implementing regulations at 15 CFR Part 930, Subpart C. At the earliest practicable time, a state with a federally approved coastal zone management program shall consult with appropriate state officials concerning the consistency of the proposed national estuarine research reserve.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan and environmental impact statement (EIS)) and the conduct of research necessary to complete basic characterization studies. The total Federal share of this group of predesignation awards may not exceed $100,000, of which up to $25,000 may be used for site selection as described in § 921.11. In the case of a multi-component national estuarine research reserve in which one or more components are proposed to be located within different states, this provision applies to each state. Financial assistance application procedures are specified in Subpart H.

(b) In selecting a site, a state may choose to develop a multiple-site research reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site research reserve also allows the state to develop complementary research and educational programs within the multiple components of its research reserve. Multiple-site research reserves are treated as one reserve in terms of financial assistance and development of an overall management framework and plan. Each individual component of a proposed multiple-site research reserve shall be evaluated both separately under § 921.11(c) and collectively within the context of the multi-component reserve as part of the site selection process. A state may propose to establish a multiple-site research reserve at the time of the intitial site selection, or at any point in the development or operation of the estuarine research reserve, even after Federal funding for the single component research reserve has expired. If the state decides to develop a multiple-site national estuarine research reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33. Importantly, however, a state may not propose to add one or more components to an already designated research reserve if the operation and management of such research reserve has been found deficient or the research conducted is not consistent with the Estuarine Research Guidelines in accordance with the provisions of Subpart E. In addition, the total acquisition funding for a multiple-site research reserve remains limited to $4,000,000 (see § 921.20). The funding for operation of multiple-site research reserve remains limited to $420,000 (see § 921.32(c)).

§ 921.11 Site selection.

(a) A state may use up to $25,000 in Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in Subpart H, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Reserve Research System (see the biogeographic classification scheme and typology set forth in § 921.3 and Appendices 1 and 2);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be a natural system;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Research reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the reserve. General, reserve boundaries will encompass two areas: key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural resources. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National estuarine research reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. Importantly, however, NOAA will not approve a site for potential national estuarine research reserve status that is dependent upon the inclusion of currently protected Federal lands in order to meet the requirements for research reserve status (such as key land and water areas). Such lands may only be included within a research reserve to serve as a buffer or for other ancillary purposes;

(4) The site's suitability for long-term estuarine research, incuding ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowers, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential national estuarine research reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting and by NOAA in the **Federal Register**.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site reserve) must contain a description of the proposed site in relationship to each of the site selection principles (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site based on the biogeographical scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the proposed site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief summary of the basis for not selecting the non-preferred sites; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the area is located.

§ 921.12 Post site selection.

(a) At the time of the state's request for NOAA approval of a proposed site, the state may submit a request for up to $40,000 of predesignation funds to develop the draft management plan and for the collection of the information necessary for preparation of the environmental impact statement. At this time, the state may also submit a request for the remainder of the predesignation fund for research necessary to complete a basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA. The state's request for these post site selection funds must be accompanied by the information specified in Subpart H and, for draft management plan development and environmental impact statement information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in research reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the national estuarine research reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and request to use remaining predesignation funds for draft management plan development and environmental impact statement development, the state shall develop a draft management plan, including an MOU. The plan will set out in detail:

(1) Research reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative section including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the research reserve;

(6) A construction plan, including a proposed construction schedule, preliminary drawings and general descriptions of proposed developments. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. If a visitor center, research center or any other facilities are proposed for construction or renovation at the site, or restorative activities which require significant construction are planned, a detailed construction plan including preliminary cost estimates and architectural drawings must be prepared as a part of the final management plan; and

(7) An acquisition plan identifying the ecologically key land and water areas of the research reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate state control over these areas sufficient to provide protection for reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed research reserve boundaries, including land already in the public domain; the method(s) which the state proposes to use—acquisition (including less-than-fee options) or the feasible alternatives—to establish adequate state control; an estimate of the fair market value of any property interest—fee or less-than-fee simple interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(i) Determine, with appropriate justification, the minimum level of control(s) required (*e.g.*, management agreement, regulation, less-than-fee property interest, fee simple property acquisition, a combination of these approaches or other feasible alternative);

(ii) Identify the level of existing state control(s);

(iii) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i) of this section;

(iv) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(iii) of this section, and perform a cost analysis of each; and

(v) Rank, *in order of cost*, the methods (including acquisition) identified in paragraph (a)(7)(iv) of this section.

An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination, etc.). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan.

Note.—As discussed in § 921.11(c)(3), if Federally protected lands are to be included within the proposed research reserve, the state must demonstrate to NOAA that the site meets the criteria for national estuarine research reserve status independent of the inclusion of such protected lands.

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural contitions; and

(10) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine research reserve, and expressing a long-term commitment by the state to mainatin effectively the research reserve after Federal financial assistance for operation and management of the site has expired. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the national estuarine research reserve. The MOU shall be signed prior to research reserve designation. If other MOUs are necessary (such as with a Federal agency or another state agency), drafts of such MOUs also must be included in the plan.

(11) If the state has a federally approved coastal zone management program, documentation that the proposed national estuarine research reserve is consistent to the maximum extent practicable. See § 921.4(b).

(b) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on a national estuarine research reserve proposal, the state shall provide all necessary information to NOAA concerning the socioeconomic and environmental impacts assocaited with implementing the draft management plan and feasible alternatives to the plan. Based on this information, NOAA will prepare the draft EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media and in the **Federal Register** by NOAA and the state, respectively. After a 45-day comment period, a final EIS will be prepared by NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After research reserve designation, a state is eligible for a supplemental acquisition and development award(s). In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine research reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $4,000,000, whichever is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in:

(1) Acquiring a fee or less-than-fee real property interest in land and water areas to be included in the research reserve boundaries (see § 921.13(a)(7)):

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Up to the point of research reserve designation, initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, preparing the final management plan, hiring a reserve manager and other staff as necessary and for other management-related activities.

Application procedures are specified in Subpart H.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the research reserve receives formal designation (see § 921.30).

Note.—The intent of these requirements and the phasing of the acquisition and development award(s) is to ensure that substantial progress in establishing adequate state control over and, if necessary, acquiring the key land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the research reserve the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the CZMA section 315 award or other federally approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]. In the event that the property is no longer included as part of the research reserve, or if the designation of the research reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property.

Note.—The intent of this requirement is to ensure that the official land record(s) associated with real property within a national estuarine research reserve acquired in whole or part with Federal funds includes an appropriate reference to the Federal interest in the property which would arise should such property: (1) Be used for a purpose other than as a national estuarine research reserve, or (2) be no longer included as a part of a federally designated national estuarine research reserve. Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by OMB Circular A-102 Revised, Attachment F, as amended or superseded, and NOAA's Uniform Relocation and Real Property Acquisition Policies.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-than-fee-simple interests acquired in whole or part with Federal funds.

(g) The expenditure of Federal funds or non-Federal matching share funds to acquire a partial undivided interest (*i.e.*, less-than-full or less than 100% of fee simple or less-than-fee-simple interest) in real property is not allowed. However, in the case where a state has

previously acquired a partial undivided interest in real property with non-Federal funds, if the remaining interest is subsequently acquired with Federal or non-Federal funds and such acquisition was identified as a part of an approved acquisition strategy, then the fair market value of such an existing partial undivided interest in real property may be allowable as match (*i.e.*, non-Federal share) for an acquisition and development award (see also the requirements of § 921.71). This prohibition does not apply to acquisition(s) of partial undivided interests which have been identified as a part of an acquisition strategy which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The AA shall designate an area as a national estuarine research reserve pursuant to section 315 of the Act, based upon written findings that the state has met the following requirements:

(1) The Governor of the coastal state in which the area is located has nominated the area for designation as a national estuarine research reserve;

(2) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(3) Key land and water areas of the proposed research reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(4) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(5) A final management plan has been approved by NOAA;

(6) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the national estuarine research reserve; and

(7) The coastal state in which the area is located has complied with the requirements of these regulations.

(b) NOAA will determine whether the designation of a national estuarine research reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to section 307(c)(1) of the CZMA and 15 CFR Part 930, Subpart C. The results of this consistency determination will be published in the **Federal Register** when a notice of designation is published. See 921.30(c).

(c) NOAA will cause a notice of designation of a national estuarine research reserve to be placed in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Less-than-fee interests and regulatory measures are encouraged where the state can demonstrate that these lands are adequately controlled consistent with the purposes of the research reserve (see also § 921.13(a)(7)).

§ 921.31 Supplemental acquisition and development awards.

After national estuarine research reserve designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award(s) for acquiring additional property interests identified in the management plan as necessary to enhance long-term protection of the area for research, for facility construction, for restorative activities identified in the approved management plan, and for administrative purposes. The amount of Federal financial assistance provided for development costs directly associated with facility construction other than land acquisition (*i.e.*, major construction activities) for any one national estuarine research reserve may not exceed $1,000,000. In the case of a multi-component national estuarine research reserve in which all components are not located in one state, this provision applies to each involved state. Application procedures are specified in Subpart H. Land acquisition must follow the procedures specified in § 921.13(a)(7) and § 921.21 (e) and (f).

§ 921.32 Operation and Management: Implementation of the Management Plan.

(a) After the national estuarine research reserve is formally designated, the state is eligible to receive Federal funds to assist the state in the operation and management of the research reserve. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the research reserve after direct Federal support is concluded.

(b) State operation and management of national estuarine research reserves shall be consistent with the mission, and shall further the goals, of the National Estuarine Research Reserve System (see § 921.1).

(c) Federal funds of up to $420,000, to be matched by the state on a 50/50 basis, are available for the initial operation and management of the national estuarine research reserve, including the establishment and initial operation of a basic environmental monitoring program. In the case of a multi-component national estuarine research reserve in which all components are not located within one state, this provision applies to each involved state. State financial responsibility for the operation and management of the research reserve is fully assumed at the conclusion of initial Federal funding for operation and management.

(d) Operation and management funds are subject to the following limitations:

(1) No more than $70,000 in Federal funds may be expended in a twelve month award period (*i.e.*, Federal funds for operation and management may not be expended at a rate greater than $70,000 per year);

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (*i.e.*, $14,000 maximum per year); and

(3) The Federal share of operation and management awards may not be used for the support of any single research reserve position (*i.e.*, research reserve manager, research coordinator, assistant manager, education/interpretive coordinator, secretary/administrative assistant, custodial support, or their equivalents) for a period longer than three years.

Note.—The intent of this requirement is to ensure the state makes a commitment of basic staff resources to the project early in the operation and management phase. Given state financial responsibility for long-term

operation and management of the site as a national estuarine research reserve, phasing down Federal support for the basic management, program coordination and administrative personnel required for efficient operation and management of the research reserve is in the interest of both the Federal Government and state. Such a limitation on the uses of the Federal share of operation and management awards, while continuing to allow state support of such personnel as a part of the state share, will aid in avoiding "all or nothing" situations otherwise faced by state agencies and legislatures at the time Federal funding expires for initial operation and management.

§ 921.33 Boundary changes, amendments to the Management Plan, and addition of multiple-site components.

(a) Changes in research reserve boundaries and major changes to the final management plan, including state laws or regulations promulgated specifically for the research reserve, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, an environmental assessment may be required. Where public notice is required, NOAA will place a notice in the **Federal Register** of any proposed changes in research reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of §§ 921.4(b) and 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine research reserve after the initial acquisition and development award for a single site has been made. Public notice of the proposed addition will be placed by NOAA in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local media. An opportunity for comment, in addition to the preparation of either an environmental assessment or environmental impact statement on the proposal, will also be required. An environmental impact statement, if required, shall be prepared in accordance with § 921.13 and shall include an administrative framework for the mulitiple-site research reserve and a description of the complementary research and educational programs within the research reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site, that an environmental assessment is sufficient to establish a multiple-site research reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site research reserve and the additional component's relationship to the original site(s).

Subpart E—Performance Evaluation Withdrawal of Designation

§ 921.40 Evaluation of system performance.

(a) Following designation of a national estuarine research reserve pursuant to § 921.30, periodic performance evaluations shall be conducted concerning the operation and management of each national estuarine research reserve, including the research being conducted within the reserve and education and interpretive activities. Evaluations may assess performance in all aspects of research reserve operation and management or may be limited in scope, focusing on selection issues of importance. Performance evaluations in assessing research reserve operation and management may also examine whether a research reserve is in compliance with the requirements of these regulations, particularly whether:

(1) The operation and management of the research reserve is consistent with and furthers the mission and goals of the National Estuarine Reserve Research System (see § 921.1), and

(2) A basis continues to exist to support any one or more of the findings made under § 921.30(a).

(b) Generally, performance during the operation and management phase supported by Federal financial assistance will be evaluated on a biennial schedule. Following the conclusion of Federal financial assistance for the support of research reserve operation and management, evaluations shall be conducted at least once every four years. More frequent evaluations may be scheduled as determined to be necessary by NOAA.

(c) Performance evaluations will be conducted by Federal officials. When determined to be necessary, Federal and non-Federal experts in natural resource management, estuarine research, interpretation or other aspects of national estuarine research reserve operation and management may be requested by NOAA to participate in performance evaluations.

(d) Performance evaulations will be conducted in accordance with the procedural and public participation provisions of the CZMA regulations on review of performance at 15 CFR Part 928 (*i.e.*, § 928.3(b) and § 928.4).

(e) To ensure effective Federal oversight of each research reserve within the National Estuarine Reserve Research System after Federal support for a reserve's operation and management is concluded, the state is required to submit an annual report on operation and management of the research reserve during the immediately preceding state fiscal year. This annual report must be submitted within a sixty day period following the end of the state fiscal year. The report shall detail program successes and accomplishments, referencing the research reserve management plan and, as appropriate, the work plan for the previous year. A work plan, detailing the projects and activities to be undertaken over the coming year to meet the goals and objectives of the research reserve as described in the management plan and the state's role in ongoing research reserve programs, shall also be included. Inadequate annual reports will trigger a full-scale performance evaluation.

§ 921.41 Suspension of eligibility for financial assistance.

(a) If a performance evaluation under § 921.40 reveals that the operation and management of the research reserve is deficient, or that the research being conducted within the reserve is not consistent with the Estuarine Research Guidelines referenced in Subpart F, the eligibility of the research reserve for Federal financial assistance as described in these regulations may be suspended until the deficiency or inconsistency is remedied.

(b) NOAA will provide the state with a written notice of the deficiency or inconsistency. This notice will explain the finding, propose a solution or solutions, provide a schedule by which the state should remedy the deficiency or inconsistency, and state whether the state's eligibility for Federal financial assistance has been suspended in whole or part. In this notice the state shall also be advised that it may comment on this finding and meet with NOAA officials to discuss the results of the performance evaluation and seek to remedy the deficiency or inconsistency.

(c) Eligibility of a research reserve for financial assistance under these regulations shall be restored upon written notice by NOAA to the state that the deficiency or inconsistency has been remedied.

(d) If, after a reasonable time, a state does not remedy a deficiency in the operation and management of a national estuarine research reserve which has been identified pursuant to a performance evaluation under § 921.40(a), such outstanding deficiency shall be considered a basis for withdrawal of designation (see § 921.42).

§ 921.42 Withdrawal of designation.

(a) Designation of an estuarine area as a national estuarine research reserve may be withdrawn if a performance evaluation conducted pursuant to § 921.40 reveals that:

(1) The basis for any one or more of the findings made under § 921.30(a) in designating the research reserve no longer exists;

(2) A substantial portion of the research conducted within the research reserve, over a period of years, has not been consistent with the Estuarine Research Guidelines referenced in Subpart F; or

(3) A state, after a reasonable time, has not remedied a deficiency in the operation and management of a research reserve identified pursuant to an earlier performance evaluation conducted under § 921.40.

(b) If a basis is found under § 921.42(a) for withdrawal of designation, NOAA will provide the state with a written notice of this finding. This notice will explain the basis for the finding, propose a solution or solutions and provide a schedule by which the state should correct the deficiency. In this notice, the state shall also be advised that it may comment on the finding and meet with NOAA officials to discuss the finding and seek to correct the deficiency.

(c) If, within a reasonable period of time, the deficiency is not corrected in a manner acceptable to NOAA, a notice of intent to withdraw designation, with an opportunity for comment, will be placed in the **Federal Register.**

(d) The state shall be provided the opportunity for an informal hearing before the AA to consider NOAA's finding of deficiency and intent to withdraw designation, as well as the state's comments on and response to NOAA's written notice pursuant to § 921.42(b) and **Federal Register** notice pursuant to § 921.42(c).

(e) Within 30 days after the informal hearing, the AA shall issue a written decision regarding the designation status of the national estuarine research reserve. If a decision is made to withdraw research reserve designation, the procedures specified in § 921.21(e) regarding the disposition of real property acquired in whole or part with Federal funds shall be followed.

Subpart F—Research

§ 921.50 General.

(a) To stimulate high quality research within designated national estuarine research reserves, NOAA may provide financial support for research which is consistent with the Estuarine Research Guidelines referenced in § 921.51. Research funded under this Subpart must be conducted within research reserves with approved final management plans. Research funds are primarily used to support management-related research that will enhance scientific understanding of the research reserve ecosystem, provide information needed by reserve managers and coastal management decisionmakers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Research projects may be oriented to specific research reserves; however, research projects that would benefit more than one research reserve in the National Estuarine Reserve Research System are encouraged.

(b) Federal research funds under this Subpart are not intended as a source of continuous funding for a particular project over time. Research funds may be used to support start-up costs for long-term projects if an applicant can identify an alternative source of long-term research support.

(c) Research funds are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register.** Research funds are provided in addition to any other funds available to a coastal state under the Act. Federal research funds must be matched equally by the recipient, consistent with § 921.71(e)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Reserve Research System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) The Estuarine Research Guidelines are being developed separately from these regulations and will be made available as administrative guidance to each national estuarine research reserve and any interested public or private individual. A summary of the Estuarine Research Guidelines will be published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines:

(1) Include a mechanism for identifying and establishing priorities among the coastal management issues that should be addressed through a coordinated research effort;

(2) Identify national estuarine research priorities and other NOAA criteria for selecting research proposals to be funded under this Subpart;

(3) Establish common research principles and objectives to guide the development of research programs at each national estuarine research reserve;

(4) Identify, to the extent practicable, consistent research methodologies which will improve comparability of data, allow for the broadest application of research results, and encourage the maximum use of the National Estuarine Reserve Research System for research purposes;

(5) Establish performance standards upon which the effectiveness of the research efforts, and the value of research reserves in addressing coastal management issues identified as priorities through the mechanism referenced in § 921.51(c)(1), may be measured; and

(6) Examine alternative sources of funds for estuarine research and recommend methods for encouraging the use of these alternative sources of funds for conducting estuarine research within the National Estuarine Reserve Research System with particular emphasis on the procedures established under § 921.52.

(d) The Estuarine Research Guidelines shall be reviewed periodically as determined to be necessary by NOAA or at least once every four years. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Reserve Research System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that uses the National Estuarine Reserve Research System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Reserve Research System when such agencies conduct estuarine research.

Subpart G—Interpretation and Education

§ 921.60 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund interpretive and educational activities. Interpretive and educational projects funded under this Subpart must be conducted within research reserves with approved final management plans.

(b) Educational and interpretive funds are available on a competitive basis to any coastal state entity. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal interpretation and educational funds must be matched equally by the recipient, consistent with § 921.71(e)]4) ("allowable costs").

§ 921.61 Categories of potential interpretive and educational projects; evaluation criteria.

(a) Proposals for interpretive or eductional projects will be considered under the following categories:

(1) Design, development and distribution/placement of interpretive or educational media (*i.e.*, the development of tangible items, such as exhibits/displays publications, posters, signs audio/visuals, computer software and maps which have an educational or interpretive purpose; and techniques for making available or locating information concerning research reserve resources, activities, or issues);

(2) Development and presentation of curricula, workshops, lectures, seminars, and other structured programs or presentations for facility or field use;

(3) Extension/outreach programs; or

(4) Creative and innovative methods and technologies for implementing interpretive or educational projects.

(b) Interpretive and educational projects may be oriented to one or more research reserves or to the entire system. Those projects which would directly benefit more than one research reserve, and, if practicable, the entire National Estuarine Reserve Research System, shall receive priority consideration for funding.

(c) Proposals for interpretive and educational projects in national estuarine research reserves will be evaluated in accordance with criteria listed below:

(1) Educational or interpretive merits;

(2) Relevance or importance to reserve management or coastal decision-making;

(3) Educational quality (e.g., soundness of approach, experience related to methodologies);

(4) Importance to the National Estuarine Reserve Research System;

(5) Budget and Institutional Capabilities (e.g., reasonableness of budget, sufficiency of logistical support); and

(6) In addition, in the case of long-term projects, the ability of the state or the grant recipient to support the project beyond this initial funding.

Subpart H—General Financial Assistance Provisions

§ 921.70 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisitions and development, operation and management, and education and interpretation. Any coastal state or public or private person may apply for Federal financial assistance awards for estuarine research. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Universal Building, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in Subpart B (predesignation), Subpart C and §921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction projects, or restorative activities involving construction.

Note: Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64830 (1977)).

§ 921.71 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistance agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period, except as provided under preagreement costs, paragraph (d) of this section.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A-102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) Site Selection and Post Site Selection Awards. Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) Acquisition and Development Awards. Cash and in-kind contributions are allowable. In general, the fair market

value of lands to be included within the research reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the national estuarine research reserve. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standard for Federal Land Acquisitions." The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state (pursuant to OMB Circular A–102 Revised, Attachment F, as amended or superseded) may also be used as match. Land, including submerged lands already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Reserve Research System, may be used as match only if it was acquired starting within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine research reserve. For state lands not in a fully-protected status (*e.g.*, a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the research reserve. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the national estuarine research reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) Operation and Management Awards. Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable. However, for the fourth and any subsequent operation and management awards (see § 921.32), if a statutory basis for long-term operation and management of the national estuarine research reserve (specific to or including specific reference to that research reserve) has not been enacted by the state and state funds adequate for the support of a research reserve manager or the equivalent have not been appropriated or otherwise demonstrated to be available, then allowable costs for match are limited to non-Federal supported personnel service (*e.g.*, state employees) necessary for direct support of research reserve operation and management as outlined in the federally approved final management plan. (See § 921.32(d)(3)).

(4) Research, Education and Interpretive Awards. Cash and in-kind contributions (directly benefiting and specifically indentifiable to the scope of work), except land, are allowable. For research awards, costs incurred in conducting a part of a research project "off-site" (*i.e.*, outside research reserve boundaries) are not allowable, with the exception of non-Federal costs incurred as part of a project meeting the following conditions:

(i) NOAA has previously approved the entire research effort both on and off-site and, specifically, the scope of work encompassed by the proposed off-site research and the manner in which it addresses a NOAA national estuarine research priority, a priority coastal management issue, and the mission and one or more goals of the National Estuarine Reserve Research System;

(ii) The information gathered will address a critical management or resource information issue within the research reserve;

(iii) The methodology proposed for the off-site research is such that, if this research, or aspect of a larger research project, were to be conducted within the boundaries of research reserve, such methodology could reasonably be expected to result in long-term negative impacts on research reserve resources or management;

(iv) The research reserve is to be used as a control area for manipulative research to be conducted in the area proposed for off-site research; and

(v) The Federal share of the research project will not be used to support any part of the off-site research.

§ 921.72 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

[FR Doc. 88–24712 Filed 10–27–88; 8:45 am]
BILLING CODE 3510–08–M

federal register

Friday
October 28, 1988

Part IV

Department of Health and Human Services

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on October 21, 1988.

HEALTH CARE FINANCING ADMINISTRATION

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

ACTION: The Health Care Financing Administration has submitted the following public information requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: On June 3, 1988, the final rule "Conditions for Intermediate Care Facilities for the Mentally Retarded," was published in the **Federal Register**. This rule revised and simplified the content of regulations for intermediate care facilities for the mentally retarded and persons with related conditions. The effective date of these regulations was October 3, 1988. In view of the considerable opportunity already extended to the public for comment, the OMB has approved expedited processing (30 days) for this information collection proposal. The following summarizes the information collection proposal submitted to OMB.

Type of Request: Revision

Originating Office: Health Care Financing Administration

Title of Information Collection: Conditions for Participation for Intermediate Care Facilities for the Mentally Retarded

Form Number: HCFA–R–120

Frequency: Annual

Respondents: Businesses or Others for Profit

Estimated Number of Responses: 3,600

Average Hours per Response: 15

Total Estimated Burden Hours: 54,181

Additional Information or Comments: As required by 5 CFR 1320.15(b)(1), a copy of the regulation text is re-published herein. The sections containing paperwork burden are as follows: 42 CFR 483.410, 483.420, 483.440, 483.450, 483.460, and 483.470.

Written comments and recommendations for the proposed information collections should be sent directly to the designated OMB Desk Officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Allison Herron.

Date: October 25, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

BILLING CODE 4120-01-M

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

A. The table of contents for Chapter IV, Subchapter E is amended by adding a new Part 483 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

Part

* * * * *

483 Conditions of participation for long term care facilities

* * * * *

PART 431—STATES ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302).

§ 431.610 [Amended]

2. In § 431.610(f)(1), remove the word "standards" and add in its place the word "requirements".

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1009, the introductory language is republished and the definition of "Active treatment in institutions for the mentally retarded" is revised as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under § 483.440(a) of this subchapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.150 [Amended]

2. Section 440.150(c)(3) is amended by removing the phrase "defined in § 435.1009" and adding in its place the phrase "specified in § 483.440".

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

E. Part 442 is amended as set forth below:

1. In the table of contents, § 442.252 and the entire Subpart G (consisting of §§ 442.400—442.516) are removed; and the titles of §§ 442.105 and 442.110, and the authority citation for Part 442 are revised to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Sec.

* * * * *

442.105 Certification with standard-level deficiencies: General provisions.

* * * * *

442.110 Certification period: Facilities with standard-level deficiencies.

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.1(a), the first sentence is revised to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements and facility certification relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities to Medicaid recipients. * * *

* * * * *

3. In § 442.13(b)(1), remove the word "standards" and add in its place the word "requirements", and revise paragraph (c) to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which the provider is found to meet all applicable conditions of participation and submits a correction plan for other deficiencies to the State survey agency or an approvable waiver request, or both.

§ 442.14 [Amended]

4. Section 442.14(b)(3) is amended by removing the word "standards" and adding in its place the word "requirements".

§ 442.16 [Amended]

5. Section 442.16(b) is amended by removing the word "standards" and adding in its place the word "requirements".

6. In § 442.30(a), the introductory language is republished and paragraphs (a)(1) and (4) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(1) The survey agency failed to apply the applicable certification requirements under Subpart D, E, or F of this part or Subpart D of Part 483, which sets forth the conditions of participation for ICFs/MR;

* * * * *

(4) The survey agency failed to use the Federal requirements and the forms, methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * *

7. Section 442.100 is revised to read as follows:

§ 442.100 State plan requirements.

A State plan must provide that the requirements of this subpart and Part 483 are met.

8. In § 442.101, paragraphs (d) and (e) are revised to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in Subpart D of this part and each of the conditions of participation in Part 405, Subpart K of this chapter.

(ii) A ICF meets the requirements in Subparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

(2) The facility is considered to meet applicable requirements based on waivers or variances granted by HCFA or survey agency if such waivers or variances are allowed under the applicable subpart.

(3) The facility has been certified with deficiencies in accordance with the following:

(i) An ICF has been certified if deficiencies are covered by an acceptable plan of correction.

(ii) An SNF or ICF/MR has been certified with standard-level deficiencies if—

(A) All conditions of participation are found met; and

(B) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.105.

(e) For SNFs and ICFs/MR, the failure to meet one or more of the applicable conditions of participation is cause for termination or non-renewal of the provider agreement.

9. Section 442.105 is amended by revising the title and the introductory paragraph to read as follows:

§ 442.105 Certification with standard-level deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards specified under Subpart D, E or F of this part or under Subpart D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

10. Section 442.110 is amended by revising the title to read as follows:

§ 442.110 Certification period: Facilities with standard-level deficiencies.

11. In § 442.117(a), the introductory paragraph is republished and paragraph (a)(1) is revised to read as follows:

§ 442.117 Termination of certification facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs) specified under Subpart D, E, and F of this part or Part 483, Subpart D of this chapter; and

* * * * *

§ 442.118 [Amended]

12. In § 442.118, paragraph (b)(1) is amended by adding the phrase "ICFs/MR" after "SNFs", and paragraph (b)(3)(i) is amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR or standards (for ICFs)."

§ 442.119 [Amended]

13. In § 442.119, paragraphs (a)(1) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" and adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs)".

§ 442.252 [Removed]

14. Subpart E is amended by removing § 442.252.

15. Section 442.254(b) is revised to read as follows:

§ 442.254 Standards for hospitals and SNF's providing ICF services.

* * * * *

(b) If a hospital or SNF participating in Medicare or Medicaid is also a provider of ICF/MR services, it must meet each of the conditions of participation specified in Part 483, Subpart D of this chapter.

§§ 442.400–442.516 [Removed]

16. Subpart G, (Consisting of §§ 442.400–442.516) is removed.

F. A new Part 483 is added to Subchapter E to read as follows:

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

Sec.

Authority: Secs. 1102, 1905(c) and (d) of the Social Security Act (42 U.S.C 1302, 1396d(c) and (d)).

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

§ 483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although these regulations are not in themselves considered conditions of participation under this Part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§ 483.410 Condition of participation: Governing body and management.

(a) *Standard: Governing body.*

The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) *Standard: Compliance with Federal, State, and local laws.*

The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(2) *Standard: Client records.*

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) *Standard: Services provided under agreements with outside sources.*

(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (j) and (k).

§ 483.420 Condition of participation: Client protections.

(a) *Standard: Protection of clients' rights.* The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) *Standard: Communication with clients, parents, and guardians.* The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) *Standard: Staff treatment of clients.* (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) *Standard: Qualified mental retardation professional.* Each client's active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional who—

(1) Has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) *Standard: Professional program services.*—(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance

with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.410(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designed as a professional recreation staff member an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified mental retardation professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) *Standard: Facility staffing.* (1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients form whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients.

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(d) *Standard: Direct care (residential living unit) staff.* (1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) *Standard: Staff training program.* (1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

§ 483.440 Condition of participation: Active treatment services.

(a) *Standard: Active treatment.* (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent

implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) *Standard: Admissions, transfers, and discharge.* (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) *Standard: Individual program plan.* (1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(iv) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) *Standard: Program implementation.* (1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the

current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) *Standard: Program documentation.* (1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measureable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) *Standard: Program monitoring and change.* (1) The individual program plan must be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) *Standard: Facility practices—Conduct toward clients.* (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) *Standard: Management of inappropriate client behavior.* (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) *Standard: Time-out rooms.* (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) *Standard: Physical restraints.* (1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) *Standard: Drug usage.* (1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j), for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.460 Condition of participation: Health care services.

(a) *Standard: Physician services.*

(1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Commitee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) *Standard: Physician participation in the individual program plan.* A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 456.380 of this chapter that specified plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems).

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) *Standard: Nursing staff.* (1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) *Standard: Dental services.* (1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental

hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) *Standard: Comprehensive dental diagnostic services.* Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) *Standard: Comprehensive dental treatment* The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) *Standard: Documentation of dental services.* (1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) *Standard: Pharmacy services.* The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy

(j) *Standard: Drug regimen review.* (1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) *Standard: Drug administration.* The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) *Standard: Drug storage and recordkeeping.* (1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) *Standard: Drug labeling.* (1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in § 405.1316 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(*1*) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(*2*) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision

of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(*1*) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(*2*) Is sufficient in number for the scope and complexity of the services provided; and

(*3*) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in § 405.1314(a) of this chapter.

(4) The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

§ 483.470 Condition of participation: Physical environment.

(a) *Standard: Client living environment.* (1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) *Standard: Client bedrooms.* (1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;

(iv) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after [*the effective date of these regulations*], have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) *Standard: Storage space in bedroom.* The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) *Standard: Client bathrooms.* The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

(e) *Standard: Heating and ventilation.* (1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) *Standard: Floors.* The facility must have—

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

(g) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) *Standard: Emergency plan and procedures.* (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

(i) *Standard: Evacuation drills.* (1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) *Standard: Fire protection.* (1) *General.* (i) Except as specified in paragraph (j)(2) of this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.[2]

(ii) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(iii) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) *Exceptions.* (i) For facilities that meet the LSC definition of a health care occupancy:

(A) The State survey agency may waive, for a period it considers appropriate, specific provisions of the LSC if—

(*1*) The waiver would not adversely affect the health and safety of the clients; and

(*2*) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(B) The State survey agency may apply the State's fire and safety code instead of the LSC if the Secretary finds that the State has a code imposed by State law that adequately protects a facility's clients.

(C) Compliance on November 26, 1982 with the 1967 edition of the LSC or compliance on April 18, 1986 with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (j)(2)(B) of this section.

(k) *Standard: Paint.* The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) *Standard: Infection control.*

(1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

§ 483.480 Condition of participation: Dietetic services.

(a) *Standard: Food and nutrition services.*

(1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) *Standard: Meal services.* (1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperature;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) *Standard: Menus.* (1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) *Standard: Dining areas and service.*

The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

---

[2] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA 101) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269.

If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level: and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: September 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 31, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-12250 Filed 6-2-88; 8:45 am]

[FR Doc. 88-24987 Filed 10-27-88; 10:27 am]
BILLING CODE 4120-01-M

Reader Aids

Federal Register

Vol. 53, No. 209

Friday, October 28, 1988

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

91 40406
94 39447
309 40378
310 40378
320 40378

Proposed Rules:

318 39307
319 39307
381 39307

10 CFR

1 43419
2 ..... 40019, 43419
7 43419
9 43419
15 43419
19 43419
20 43419
21 43419
30 43419
35 43419
40 43419
50 ..... 42939, 43419
51 43419
53 43419
55 43419
60 43419
61 43419
70 43419
71 43419
72 43419
73 43419
74 43419
75 43419
81 43419
100 43419
110 43419
140 43419
150 43419
170 43419
171 43419
600 38939
1035 38939

Proposed Rules:

15 39480
20 41342
35 39745
50 ..... 40432, 41178, 41607
52 41609
140 40233
430 39403

11 CFR

Proposed Rules:

106 40070
109 40070
114 40070

12 CFR

11 43677
32 40720
207 43678
220 43678
221 43678
224 43678
611 39079
614 32609
615 ..... 39229, 40033
618 ..... 39229, 40867
620 39609
621 39609
624 40049
704 42942

Proposed Rules:

Ch. V 41343
303 41180
330 39746
346 41180
509 40432
512 40432
522 40449
541 40449
542 40449
543 40449
544 40449
545 40449
547 40449
548 40449
549 40449
569a 40449
569b 40449
569c 40449
615 39099
701 ..... 41609–41613, 42953, 42955
711 41614
790 42955
792 42955
796 42955

13 CFR

105 38941
115 41149
121 43422

Proposed Rules:

108 ..... 38737, 41351

14 CFR

13 39404
21 39448
23 39448
39 ..... 39250, 39449, 39450, 39839, 40051, 41149–41157, 41313, 41314
61 40318
71 ..... 39252–39254, 39451, 40052–40054, 40318, 40408, 40409, 41158, 43425
73 ..... 39254, 40410
91 ..... 40318, 43320
95 41315
97 ..... 39452, 43426
99 39842
121 40316
135 40316
139 40842
156 41302
1203 41318

Proposed Rules:

Ch. I 39611, 40449, 40738
39 ..... 40071, 40072, 40450, 41186–41196
71 ..... 39312–39314, 40073, 41198, 41352, 41512, 43477
73 40452
75 ..... 40452, 40825
99 39846
119 39852
121 39852
125 39852
127 39852
135 39852
157 39062
399 41353

15 CFR

15 41318
15a 41318
379 38835
399 38835
773 ..... 41321, 43427
785 40410
799 ..... 40410, 43427
801 ..... 39452, 41562
922 43802

Proposed Rules:

303 ..... 39486, 39612
768 40074
770 40074
771 40074
772 40074
773 40074
774 40074
775 40074
776 40074
777 40074
778 40074
779 40074
785 40074
786 40074
790 40074
799 40074
921 43816

16 CFR

2 40867
13 38941
304 38942
305 39741
1700 41159

Proposed Rules:

240 43233
419 39103
435 43448
1700 41199–41202

17 CFR

150 41563
200 42944
240 ..... 38967, 40721, 43800

Proposed Rules:

15 39103
240 41204–41206

18 CFR

4 40722
37 40869
141 40875
260 40875
271 43192
292 40722
357 40875
1300 40217
1301 40217
1307 39081

Proposed Rules:

154 40235
157 40235
260 40235
284 40235
385 40235
388 40235

19 CFR

4 43197
19 40218
112 40218
146 40218
178 43197

Proposed Rules:

211 40453

20 CFR

205 39255
365 43429
404 ..... 38943, 39014, 43681
416 39014
614 ..... 40550, 43799
626 41572
627 41572
628 41572
629 41572
630 41572
631 41572

Proposed Rules:

Ch. V 39403, 43731
217 40901
235 39315
404 39487
416 39487
655 43722

21 CFR

5 40055
73 41322–41324
74 ..... 41649, 43681, 43682
81 ..... 41649, 43681, 43682, 43685
82 ..... 41649, 43681, 43682
172 ..... 40878, 41325
173 ..... 39455, 43319
177 39083
312 41516
314 41516
436 39839
444 40725
446 39839
510 ..... 39256, 39839, 40055–40057, 40726–40729
520 ..... 40055, 40058, 40726
522 ..... 39839, 40056, 40057, 40726–40728
524 ..... 39084, 39256, 39839, 40726
540 ..... 40058, 40729
546 40726
555 40726
556 40059
558 ..... 38708, 39257, 40059, 40729
573 40060
886 ..... 38946, 40825
1308 ..... 40061, 43684

Proposed Rules:

1308 40390

22 CFR

7 39588
20 39456
204 39015
1507 40411

24 CFR

200 40220
203 40220
204 40220
213 40220
220 40220
221 40220
222 40220
232 40220
234 40220
235 40220
240 40220
251 40220
252 40220
255 40220
511 40220
570 ..... 40220, 41329, 41330
813 40220
882 40220
887 40220

888.....40220
904.....40220, 41597
905.....40220
913.....40220
941.....41597
960.....40220
964.....40220
966.....40220
970.....40220

Proposed Rules:

18.....43610
200.....40624, 41038, 43156
201.....39613, 40624
203.....38844, 40624
205.....40624
206.....43156
207.....40624
213.....38844, 40624
215.....40624, 41038
220.....38844
221.....38844, 40624
222.....38844
226.....38844
232.....40624
233.....38844
234.....38844, 40624
235.....38844, 40624, 41038
236.....40624, 41038
241.....40624
242.....40624
244.....40624
247.....40624, 41038
250.....40624
251.....40624
255.....40624
290.....40624
390.....40458
501.....40624
510.....40624
570.....40624
590.....40624, 41026
750.....40624
812.....41038
813.....40624
850.....41038
880.....40624, 41038
881.....40624, 41038
882.....40624, 41038
883.....40624, 41038
884.....40624, 41038
885.....40624
886.....40624, 41038
900.....40624, 41038
904.....40624, 41038
905.....40256, 40624, 41038, 43610
906.....40246
912.....41038
913.....40624
960.....40624, 41038
968.....40903, 43648
990.....43610

26 CFR

1.....38708, 39015, 39589, 40879, 41013, 43522, 43688
602.....38708, 39015, 39589, 43688

Proposed Rules:

1.....43736

27 CFR

Proposed Rules:

4.....40907
12.....40907
19.....40908

28 CFR

16.....41160
541.....40686
550.....40687

29 CFR

801.....41494, 43320
2610.....39258, 40222
2619.....40222
2622.....39258
2676.....40224
1952.....43688

Proposed Rules:

1910.....38738, 39581
1915.....38738, 39581
1917.....38738, 39581
1918.....38738, 39581
1926.....38738, 39581
2560.....40674
2570.....40677
2610.....39200, 39613, 39718

30 CFR

56.....41600
57.....41600
206.....39459
218.....43200
773.....38868
780.....43584
784.....43584
785.....40828, 43320
816.....43584
817.....43584
823.....40828, 43320
913.....43112
916.....39085, 39467
917.....39259, 39470
934.....39261
938.....43437

Proposed Rules:

256.....38739
281.....38739
282.....38739
906.....39105
913.....42973
916.....43449
925.....43450
935.....41208
938.....39316, 39489
946.....42974
951.....42976

31 CFR

103.....40062
321.....39581
330.....39404

Proposed Rules:

103.....43736

32 CFR

173.....42945
199.....38947, 41331
276.....39262
277.....39262
351b.....43201
351c.....43201
505.....43689
706.....40880
1285.....38716

33 CFR

100.....38716, 39273, 39274, 40880, 41161
117.....38717
165.....38718, 39604, 40414, 41161–41164

Proposed Rules:

151.....43622
155.....43622
158.....43622

34 CFR

219.....39018
222.....39018
330.....41084
331.....41084
500.....39218
501.....39218
524.....39218
525.....39218
526.....39218
548.....39218
561.....39218
562.....39218
573.....39218
574.....39218
581.....39218

Proposed Rules:

75.....41466
76.....41466
78.....41466
200.....41466
204.....41466
212.....43178
263.....39876
668.....39317
682.....39317
785.....39406
786.....39406
787.....39406

36 CFR

211.....40729
228.....43690
1150.....39473

Proposed Rules:

251.....40739
1270.....39747

37 CFR

10.....41278

Proposed Rules:

1.....39420
10.....38740, 38948
100.....39734
501.....39734

38 CFR

Proposed Rules:

3.....40544
8.....39750
17.....43452
21.....39490
36.....40742

39 CFR

111.....43201
232.....39087

Proposed Rules:

111.....40097

40 CFR

51.....40656
52.....38719, 38722, 39087, 39742, 40415, 40656, 40881, 41600, 43691
60.....38892, 39412, 41333, 41649, 43799
81.....38724
122.....40562
147.....39088, 43080–43096
148.....41601
180.....39090, 43202
228.....41013
233.....41649
264.....39720
270.....41649
271.....41164
272.....38950
280.....43322
281.....43322
372.....39472
403.....40562
700.....40882
704.....41335
761.....40882
799.....38952

Proposed Rules:

52.....40460, 40745, 40746, 42977, 42979
61.....39058
145.....38741
148.....43400
177.....41126
178.....41126
179.....41126
180.....39106–39109, 40824, 41126, 41209, 42981
185.....40824
186.....40824
256.....40243
257.....41210, 41615
258.....41210, 41615
261.....40316, 41288
300.....40908–40910
311.....40692
435.....41356
763.....38868
799.....40244

41 CFR

101–7.....41165, 41166
105–54.....40224
201–1.....40066
201–30.....40066
201–32.....40066

42 CFR

405.....38835
412.....38835
413.....38835
424.....40231
489.....38835

Proposed Rules:

435.....43320
436.....43320

43 CFR

3450.....39015
3590.....39459

Public Land Orders:

6687.....39274

Proposed Rules:

2810.....39403
5450.....39491
9230.....39403

44 CFR

62.....39091
64.....40426, 43693, 43694
65.....40730
67.....40731

Proposed Rules:

67.....38741, 40098, 40911, 42982

45 CFR

Proposed Rules:
302.....39110
303.....39110
304.....39110
305.....39110
613.....42950
1304.....41088
1305.....41088
1308.....41088
1626.....40914, 41649

46 CFR

67.....41166
571.....43696

Proposed Rules:
25.....43622
67.....41211
580.....38742, 38969
586.....39317

47 CFR

0.....39092, 40884
1.....40884, 41169
36.....39095
73.....39095, 39605, 40890–40894, 41169–41171, 42952, 43202–43204, 43440, 43441
80.....41169
90.....40894
94.....38725
300.....39095

Proposed Rules:
1.....40918
2.....41213
73.....38743, 38747, 39614–39617, 40919, 41213, 42983, 42984, 43245, 43246, 43736
76.....40920, 43736
80.....41213
90.....39114

48 CFR

4.....43386
5.....43386
8.....43386
9.....43386
13.....43386
14.....43386
15.....43386
19.....43386
25.....43386
28.....43386
33.....43386
36.....43386
37.....43386
45.....43386
52.....43386
53.....43386
204.....43205
227.....43698
252.....43698
301.....43205
302.....43205
304.....43205
305.....43205
306.....43205
307.....43205
315.....43205
317.....43205
319.....43205
332.....43205
339.....43205
342.....43205
352.....43205
519.....39096
807.....43209
852.....43209

Proposed Rules:
14.....41535
15.....41535
31.....41527, 41530
214.....41390
215.....41390
222.....38749
232.....43738
242.....43738
245.....43738
247.....38753
252.....38753, 43738

49 CFR

383.....39044
390.....39044
391.....39044
392.....39044
531.....39275
1185.....39096, 40068
1207.....40428
1249.....40428

Proposed Rules:
177.....39114
531.....39115
571.....39751, 40462, 40463, 40921
661.....43457
663.....40850
1152.....43246
1207.....39119
1249.....39119
1312.....40922

50 CFR

216.....39743
601.....39303
611.....39475
625.....39475, 43319
640.....39581
642.....39097, 40231
655.....43718
663.....39606
675.....38725, 39097, 39479, 39718, 39744, 40894

Proposed Rules:
17.....38969, 39617–39626, 40479
23.....38755
216.....40246
646.....42985
651.....39627
655.....43741
661.....41214
663.....41214

LIST OF PUBLIC LAWS

Last List October 27, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3471/Pub. L. 100-527

Department of Veterans Affairs Act. (Oct. 25, 1988; 102 Stat. 2635; 14 pages) Price: $1.00

H.R. 4554/Pub. L. 100-528

To remove certain restrictions on land acquisitions for Antietam National Battlefield. (Oct. 25, 1988; 102 Stat. 2649; 1 page) Price: $1.00

H.R. 5059/Pub. L. 100-529

To quiet title and possession with respect to a certain private land claim in Sumter County, Alabama. (Oct. 25, 1988; 102 Stat. 2650; 1 page) Price: $1.00

H.J. Res. 648/Pub. L. 100-530

To encourage increased international cooperation to protect biological diversity. (Oct. 25, 1988; 102 Stat. 2651; 1 page) Price: $1.00

S. 836/Pub. L. 100-531

To amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes. (Oct. 25, 1988; 102 Stat. 2652; 2 pages) Price: $1.00

S. 659/Pub. L. 100-532

Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988. (Oct. 25, 1988; 102 Stat. 2654; 35 pages) Price: $1.25